

A NONSUBSTANTIVE REVISION
OF STATUTES RELATING TO
SOLVENCY OF INSURERS, PROPERTY AND CASUALTY
INSURANCE, OTHER TYPES OF INSURANCE COVERAGE,
AND UTILIZATION REVIEW AND INDEPENDENT REVIEW

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original 1949 enactment provided that the "act" applied to certain kinds of insurance and insurers and consisted only of the provisions revised as Chapter 1805. Although V.T.I.C. Article 5.75-3, which was enacted by Chapter 42, Acts of the 68th Legislature, Regular Session, 1983, is currently included in Subchapter F, that article was not included in the 1949 enactment from which Article 5.75 is derived. In addition, Article 5.75-3 includes specific applicability provisions. It is clear from the history of Subchapter F and the language of Article 5.75-3 that the legislature did not intend for the reference in Article 5.75 to "[t]his subchapter" to refer to Article 5.75-3. The revised law is drafted accordingly.

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18	SUBCHAPTER A. GENERAL PROVISIONS		
19	<u>Revised Law</u>		
20	Sec. 1801.001.	DEFINITION. In this chapter, "committee"	
21	means the property and casualty insurance legislative oversight		
22	committee. (V.T.I.C. Art. 21.49-20, Sec. (a).)		
23	<u>Source Law</u>		
24	Art. 21.49-20. (a) In this section, "committee"		
25	means the property and casualty insurance legislative		
26	oversight committee.		
27	<u>Revised Law</u>		
28	Sec. 1801.002.	SUNSET PROVISION. The committee is subject	
29	to Chapter 325, Government Code (Texas Sunset Act). Unless		
30	continued in existence as provided by that chapter, the committee		
31	is abolished September 1, 2007. (V.T.I.C. Art. 21.49-20, Sec.		
32	(d).)		
33	<u>Source Law</u>		
34	(d) The committee is subject to Chapter 325,		
35	Government Code (Texas Sunset Act). Unless continued		
36	in existence as provided by that chapter, the		

committee is abolished September 1, 2007.

[Sections 1801.003-1801.050 reserved for expansion]

SUBCHAPTER B. LEGISLATIVE OVERSIGHT COMMITTEE

Revised Law

Sec. 1801.051. COMPOSITION OF COMMITTEE. (a) The property and casualty insurance legislative oversight committee is composed of seven members as follows:

(1) the chair of the Senate Business and Commerce Committee and the chair of the House Committee on Insurance, who shall serve as joint presiding officers of the committee;

(2) two members of the senate appointed by the lieutenant governor;

(3) two members of the house of representatives appointed by the speaker of the house of representatives; and

(4) the public insurance counsel.

(b) An appointed member of the committee serves at the pleasure of the appointing official.

(c) In making appointments to the committee, the appointing officials shall attempt to appoint persons who represent the gender composition, minority populations, and geographic regions of this state. (V.T.I.C. Art. 21.49-20, Secs. (b), (c).)

Source Law

(b) The committee is composed of seven members as follows:

(1) the chair of the Senate Business and Commerce Committee and the chair of the House Committee on Insurance, who shall serve as joint chairs of the committee;

(2) two members of the senate appointed by the lieutenant governor;

(3) two members of the house of representatives appointed by the speaker of the house of representatives; and

(4) the public insurance counsel.

(c) An appointed member of the committee serves at the pleasure of the appointing official. In making appointments to the committee, the appointing officials shall attempt to appoint persons who represent the gender composition, minority populations, and geographic regions of the state.

Revised Law

Sec. 1801.052. MEETINGS. The committee shall meet with the commissioner at least annually. (V.T.I.C. Art. 21.49-20, Sec. (e))

1 (part).)

2 Source Law

3 (e) The committee shall:
4 (1) meet at least annually with the
5 commissioner;

6 Revised Law

7 Sec. 1801.053. POWERS AND DUTIES OF COMMITTEE. (a) The
8 committee shall:

9 (1) receive information about rules proposed by the
10 department relating to property and casualty insurance and may
11 submit comments to the commissioner on the proposed rules;

12 (2) monitor the progress of property and casualty
13 insurance regulation reform, including:

14 (A) the fairness of rates, underwriting
15 guidelines, and rating manuals;

16 (B) the availability of coverage; and

17 (C) the effect of rate rollbacks, credit scoring,
18 and regulation of homeowners and automobile insurance markets;

19 (3) review recommendations for legislation proposed
20 by the department; and

21 (4) review the necessity of having the department
22 periodically examine the market conduct of an insurer or group of
23 insurers, including the insurer's or group's:

24 (A) business practices;

25 (B) performance; and

26 (C) operations.

27 (b) The committee may request reports and other information
28 from the department as necessary to implement this chapter.

29 (V.T.I.C. Art. 21.49-20, Secs. (e) (part), (f).)

30 Source Law

31 (e) The committee shall:

32 . . .
33 (2) receive information about rules
34 relating to property and casualty insurance proposed
35 by the department, and may submit comments to the
36 commissioner on those proposed rules;

37 (3) monitor the progress of property and
38 casualty insurance regulation reform, including the
39 fairness of rates, underwriting guidelines, and rating

1 manuals, the availability of coverage, the effect of
2 rate rollbacks, credit scoring, and regulation of
3 homeowners and automobile insurance markets;
4 (4) review recommendations for
5 legislation proposed by the department; and
6 (5) review the necessity of having the
7 department periodically examine the market conduct of
8 an insurer or group of insurers, including the
9 business practices, performance, and operations of the
10 insurer or group of insurers.
11 (f) The committee may request reports and other
12 information from the department as necessary to carry
13 out this section.

14 Revised Law

15 Sec. 1801.054. REPORT. (a) Not later than November 15 of
16 each even-numbered year, the committee shall report on the
17 committee's activities under Sections 1801.052 and 1801.053(a) to:

- 18 (1) the governor;
19 (2) the lieutenant governor; and
20 (3) the speaker of the house of representatives.

21 (b) The report must include:

- 22 (1) an analysis of any problems caused by property and
23 casualty insurance regulation reform; and
24 (2) recommendations of any legislative action
25 necessary to address those problems and to foster stability,
26 availability, and competition within the property and casualty
27 insurance industry. (V.T.I.C. Art. 21.49-20, Sec. (g).)

28 Source Law

29 (g) Not later than November 15 of each
30 even-numbered year, the committee shall report to the
31 governor, lieutenant governor, and speaker of the
32 house of representatives on the committee's activities
33 under Subsection (e) of this section. The report shall
34 include:
35 (1) an analysis of any problems caused by
36 property and casualty insurance regulation reform; and
37 (2) recommendations of any legislative
38 action necessary to address those problems and to
39 foster stability, availability, and competition
40 within the property and casualty insurance industry.

41 CHAPTER 1802. PROPERTY AND CASUALTY INSURANCE INITIATIVES TASK
42 FORCE

43 Sec. 1802.001. PROPERTY AND CASUALTY INSURANCE

44 INITIATIVES TASK FORCE 791

1 CHAPTER 1802. PROPERTY AND CASUALTY INSURANCE INITIATIVES TASK
2 FORCE

3 Revised Law

4 Sec. 1802.001. PROPERTY AND CASUALTY INSURANCE INITIATIVES
5 TASK FORCE. (a) The commissioner may establish a task force to
6 study the utility and feasibility of instituting various property
7 and casualty insurance initiatives in this state.

8 (b) The initiatives studied may include:

9 (1) possible coordination with:

10 (A) the Texas Economic Development Bank to make
11 certain property and casualty insurance an enterprise zone program
12 under Chapter 2303, Government Code; and

13 (B) Neighborhood Housing Service (NHS) programs
14 to establish voluntary NHS-Insurance Industry Partnerships;

15 (2) possible insurance agent programs to increase
16 minority agency access to standard insurance companies, including
17 minority intern programs with insurance companies;

18 (3) possible tax incentives for insurance written in
19 underserved areas; and

20 (4) a consumer education program designed to increase
21 the ability of consumers to differentiate among different products
22 and providers in the property and casualty insurance market.

23 (V.T.I.C. Art. 21.49B.)

24 Source Law

25 Art. 21.49B. The commissioner may establish a
26 task force to study the utility and feasibility of
27 instituting various property and casualty insurance
28 initiatives in this state. The initiatives to be
29 studied may include, but are not limited to:

30 (1) possible coordination with the Texas
31 Economic Development Bank to make certain property and
32 casualty insurance an enterprise zone program pursuant
33 to Chapter 2303, Government Code;

34 (2) possible coordination with
35 Neighborhood Housing Service (NHS) Programs to
36 establish voluntary NHS-Insurance Industry
37 Partnerships;

38 (3) possible insurance agent programs to
39 increase minority agency access to standard insurance
40 companies, including minority intern programs with
41 insurance companies;

42 (4) possible tax incentives for insurance
43 written in underserved areas; and

1 (5) a consumer education program designed
2 to increase the ability of consumers to differentiate
3 among different products and providers in the property
4 and casualty market.

5 Revisor's Note

6 (1) V.T.I.C. Article 21.49B states that the
7 initiatives studied under that article may "include,
8 but are not limited to" the specified initiatives. The
9 revised law omits the phrase "but are not limited to"
10 as unnecessary because Section 311.005(13),
11 Government Code (Code Construction Act), applicable to
12 the revised law, and Section 312.011(19), Government
13 Code, provide that "includes" and "including" are
14 terms of enlargement and not of limitation and do not
15 create a presumption that components not expressed are
16 excluded.

17 (2) Subdivision (5), V.T.I.C. Article 21.49B,
18 refers to "the property and casualty market." The
19 revised law substitutes the phrase "the property and
20 casualty insurance market" for "the property and
21 casualty market" to avoid confusion and to be
22 consistent with the first sentence of the section.

23 CHAPTER 1803. REPORTS OF INSURANCE COVERAGE FOR STATE AGENCIES

24 Sec. 1803.001. DEFINITIONS 792
25 Sec. 1803.002. REPORTING REQUIREMENTS 793
26 Sec. 1803.003. FAILURE TO REPORT 794
27 Sec. 1803.004. RULES 794

28 CHAPTER 1803. REPORTS OF INSURANCE COVERAGE FOR STATE AGENCIES

29 Revised Law

30 Sec. 1803.001. DEFINITIONS. In this chapter:

- 31 (1) "Insurer" means an insurance company or other
32 entity that is authorized by the department to engage in the
33 business of insurance in this state, including:
34 (A) a reciprocal or interinsurance exchange;
35 (B) a mutual insurance company;
36 (C) a county mutual insurance company; and

1 (D) a Lloyd's plan.

2 (2) "State agency" has the meaning assigned by Section
3 412.001, Labor Code. (V.T.I.C. Art. 21.49-15A, Secs. 1(1), (3).)

4 Source Law

5 Art. 21.49-15A

6 Sec. 1. In this article:

7 (1) "Insurer" means an insurance company,
8 inter-insurance exchange, mutual or reciprocal
9 association, county mutual insurance company, Lloyd's
10 plan, or other entity that is authorized by the Texas
11 Department of Insurance to engage in the business of
12 insurance in this state.

13 (3) "State agency" has the meaning
14 assigned by Section 412.001, Labor Code.

15 Revisor's Note

16 (1) Section 1(1), V.T.I.C. Article 21.49-15A,
17 refers to an "inter-insurance exchange" and a "mutual
18 or reciprocal association." For consistency in
19 terminology throughout this code, the revised law
20 substitutes "reciprocal or interinsurance exchange"
21 for "inter-insurance exchange" and "reciprocal
22 association" because that is the term used in Chapter
23 942 of this code, which governs reciprocal and
24 interinsurance exchanges, and substitutes "mutual
25 insurance company" for "mutual . . . association"
26 because that is the term used in Chapter 883 of this
27 code, which governs mutual insurance companies.

28 (2) Section 1(2), V.T.I.C. Article 21.49-15A,
29 defines "office" as the State Office of Risk
30 Management. For clarity, the revised law omits the
31 definition and substitutes the full name of the agency
32 for references to "office" throughout the chapter.
33 The omitted law reads:

34 (2) "Office" means the State
35 Office of Risk Management.

36 Revised Law

37 Sec. 1803.002. REPORTING REQUIREMENTS. (a) Each insurer
38 that enters into an insurance policy or other contract or agreement

1 with a state agency for the purchase by the state agency of
2 property, casualty, or liability insurance coverage, including a
3 policy, contract, or agreement subject to competitive bidding
4 requirements, shall report to the State Office of Risk Management
5 the intended sale of the insurance coverage.

6 (b) The insurer shall report the intended sale of the
7 insurance coverage not later than the 30th day before the date the
8 sale is scheduled to occur in the manner prescribed by the State
9 Office of Risk Management.

10 (c) The State Office of Risk Management may require an
11 insurer to submit copies of insurance forms, policies, and other
12 relevant information. (V.T.I.C. Art. 21.49-15A, Secs. 2(a), (b),
13 (c).)

14 Source Law

15 Sec. 2. (a) Each insurer that enters into an
16 insurance policy or other contract or agreement with a
17 state agency for the purchase of property, casualty,
18 or liability insurance coverage by the state agency,
19 including a policy, contract, or agreement subject to
20 competitive bidding requirements, shall report the
21 intended sale to the office in the manner prescribed by
22 that office.

23 (b) The insurer shall report the intended sale
24 not later than the 30th day before the date the sale of
25 the insurance coverage is scheduled to occur.

26 (c) The office may require an insurer to submit
27 copies of insurance forms, policies, and other
28 relevant information.

29 Revised Law

30 Sec. 1803.003. FAILURE TO REPORT. An insurer that fails to
31 comply with the reporting requirements of this chapter is subject
32 to sanctions under Chapter 82. (V.T.I.C. Art. 21.49-15A, Sec.
33 2(e).)

34 Source Law

35 (e) Failure by an insurer to comply with the
36 reporting requirements adopted under this article
37 constitutes grounds for the imposition of sanctions
38 against that insurer under Chapter 82.

39 Revised Law

40 Sec. 1803.004. RULES. The State Office of Risk Management
41 shall adopt rules as necessary to implement this chapter. The
42 office shall consult with the commissioner in adopting rules.

(V.T.I.C. Art. 21.49-15A, Sec. 2(d).)

Source Law

(d) The office shall adopt rules as necessary to implement this article. In adopting those rules, the office shall consult with the commissioner.

CHAPTER 1804. RATES AND FORMS FOR NATIONAL DEFENSE PROJECTS

Sec. 1804.001. APPLICABILITY OF CHAPTER 795

Sec. 1804.002. SPECIAL RATES AND RATING PLANS FOR
CASUALTY INSURANCE 796

Sec. 1804.003. SPECIAL RATES AND FORMS FOR MATERIAL
DAMAGE INSURANCE 797

CHAPTER 1804. RATES AND FORMS FOR NATIONAL DEFENSE PROJECTS

Revised Law

Sec. 1804.001. APPLICABILITY OF CHAPTER. This chapter applies only to insurance in relation to a national defense project in this state. (V.T.I.C. Arts. 5.69 (part), 5.70 (part), 5.71 (part).)

Source Law

Art. 5.69. . . . [to be applicable only to the construction or operation of National Defense Projects] in Texas,

Art. 5.70. . . . [required or used upon] such [National Defense Projects, and]

Art. 5.71. This subchapter shall be applicable only to rates upon insurance in relation to National Defense Projects, and

Revisor's Note

V.T.I.C. Article 5.71 states that the subchapter, meaning Subchapter E, V.T.I.C. Chapter 5, revised as this chapter, is "applicable only to rates upon insurance in relation to National Defense Projects." V.T.I.C. Article 5.70, revised in relevant part in this chapter as Section 1804.003, is expressly applicable to rates and forms for this insurance. The revised law omits the reference in V.T.I.C. Article 5.71 to "rates" because the reference is inaccurate and because each provision of Subchapter E, Chapter 5, contains express language indicating the

1 applicability of the provision to "rates" or "rates
2 and forms."

3 Revised Law

4 Sec. 1804.002. SPECIAL RATES AND RATING PLANS FOR CASUALTY
5 INSURANCE. (a) The commissioner may promulgate special rates and
6 special rating plans for workers' compensation insurance,
7 automobile insurance, and other lines of casualty insurance, to
8 apply only to the construction or operation of a national defense
9 project.

10 (b) The commissioner may promulgate the special rates and
11 special rating plans separately for each class of insurance or in
12 combination for all classes of insurance.

13 (c) The commissioner may adopt rules as may be necessary,
14 proper, or advisable to place in effect special rates and special
15 rating plans promulgated under this section. (V.T.I.C. Art. 5.69
16 (part).)

17 Source Law

18 Art. 5.69. The Board of Insurance Commissioners
19 of Texas is hereby authorized and empowered to make and
20 promulgate special rates and special rating plans for
21 Workmen's Compensation, Motor Vehicle and other lines
22 of Casualty insurance to be applicable only to the
23 construction or operation of National Defense Projects
24 . . . and to make such special rates and special rating
25 plans separately for each class of insurance, or in
26 combination of all such classes. The Board shall also
27 have authority to make and promulgate such rules and
28 regulations as may be necessary, proper or advisable
29 in placing such rates and plans in effect.

30 Revisor's Note

31 (1) V.T.I.C. Article 5.69 refers to the "Board
32 of Insurance Commissioners of Texas." Under Chapter
33 499, Acts of the 55th Legislature, Regular Session,
34 1957, administration of the insurance laws of this
35 state was reorganized, and the powers and duties of the
36 Board of Insurance Commissioners were transferred to
37 the State Board of Insurance. Chapter 685, Acts of the
38 73rd Legislature, Regular Session, 1993, abolished the
39 State Board of Insurance and transferred its functions

1 to the commissioner of insurance and the Texas
2 Department of Insurance. Throughout this chapter,
3 references to the Board of Insurance Commissioners
4 have been changed appropriately.

5 (2) V.T.I.C. Article 5.69 refers to "[m]otor
6 [v]ehicle . . . insurance." The revised law
7 substitutes "automobile insurance" for "motor vehicle
8 insurance" for consistency of terminology in this
9 code. "Automobile insurance" is the term more commonly
10 used to describe the kind of insurance that provides
11 coverage for motor vehicles.

12 (3) V.T.I.C. Article 5.69 authorizes the Board
13 of Insurance Commissioners of Texas, meaning the
14 commissioner of insurance for the reasons stated in
15 Revisor's Note (1) to this section, to adopt certain
16 "rules and regulations." The revised law throughout
17 this chapter omits references to "regulations" as
18 unnecessary in this context because a rule is defined
19 under Section 311.005(5), Government Code (Code
20 Construction Act), to include a regulation, and that
21 definition applies to the revised law.

22 Revised Law

23 Sec. 1804.003. SPECIAL RATES AND FORMS FOR MATERIAL DAMAGE
24 INSURANCE. (a) The commissioner may promulgate special rates and
25 forms for fire insurance, windstorm insurance, and other kinds of
26 material damage insurance required or used on a national defense
27 project.

28 (b) The commissioner may adopt rules incidental to the
29 business described by Subsection (a) and necessary to place in
30 effect special rates and forms promulgated under this section.
31 (V.T.I.C. Art. 5.70 (part).)

32 Source Law

33 Art. 5.70. The Board of Insurance Commissioners
34 is hereby authorized and empowered to promulgate
35 special rates and forms for fire and windstorm

insurance, and other types of material damage insurance required or used upon . . . National Defense Projects, and the Board may also promulgate rules and regulations incidental to said business and necessary to place its special rates and forms in effect.

Revisor's Note
(End of Chapter)

(1) The revised law omits as unnecessary the part of V.T.I.C. Article 5.71 relating to the cumulative effect of the "subchapter," meaning Subchapter E, V.T.I.C. Chapter 5, revised as this chapter. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless it provides otherwise or unless the statutes are in conflict. The general principle applies to this revision. The omitted law reads:

Art. 5.71. [This subchapter shall be] cumulative of existing laws and

(2) V.T.I.C. Article 5.71 establishes that the "subchapter," meaning Subchapter E, V.T.I.C. Chapter 5, revised as this chapter, is an exception to existing laws. The revised law omits this provision as unnecessary because general rules of statutory construction provide that a more specific provision supersedes a general statement of law, and this chapter is specific to national defense projects in Texas. Furthermore, the revised law omits the provision as executed because the provision refers to existing law on the date of enactment and served its purpose on that date. The omitted law reads:

Art. 5.71. . . . to the extent of such subject constitutes an exception to existing laws.

CHAPTER 1805. JOINT UNDERWRITING AND ADVISORY ORGANIZATIONS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1805.001. APPLICABILITY OF CHAPTER 799
[Sections 1805.002-1805.050 reserved for expansion]

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9		INFORMATION BY INSURER 804
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18	Sec. 1805.101.	EXAMINATION AUTHORIZED 810
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26	SUBCHAPTER A. GENERAL PROVISIONS	
27	<u>Revised Law</u>	
28	Sec. 1805.001.	APPLICABILITY OF CHAPTER. This chapter
29	applies to the kinds of insurance and insurers subject to:	
30	(1)	Section 403.002;
31	(2)	Section 941.003 with respect to the application of
32	a law described by Section 941.003(b)(3) or (c);	
33	(3)	Section 942.003 with respect to the application of
34	a law described by Section 942.003(b)(3) or (c);	

- 1 (4) Subchapter A, B, C, or D, Chapter 5;
2 (5) Subchapter H, Chapter 544;
3 (6) Subchapter A, Chapter 2301;
4 (7) Chapter 252, 253, 254, 255, 426, 1806, 1807, 2001,
5 2002, 2003, 2004, 2005, 2006, 2051, 2052, 2053, 2171, 2251, or 2252;
6 (8) Subtitle B or C, Title 10;
7 (9) Chapter 406A, Labor Code; or
8 (10) Chapter 2154, Occupations Code. (V.T.I.C.
9 Art. 5.75.)

10 Source Law

11 Art. 5.75. This subchapter applies to the kinds
12 of insurance and to the insurers subject to
13 Subchapters A, B, C, and D of Chapter 5 of this code.

14 Revisor's Note

15 (1) V.T.I.C. Article 5.75 provides that the
16 "subchapter," meaning Subchapter F, V.T.I.C. Chapter
17 5, applies to certain kinds of insurance and insurers.
18 The text of the article was originally enacted by
19 Section 4, Chapter 539, Acts of the 51st Legislature,
20 Regular Session, 1949, and was codified in 1951 as
21 Article 5.75 in Subchapter F, V.T.I.C. Chapter 5. The
22 original 1949 enactment provided that the "act"
23 applied to certain kinds of insurance and insurers and
24 consisted only of the provisions revised as this
25 chapter (V.T.I.C. Articles 5.72, 5.73, 5.74, and
26 5.75). Although V.T.I.C. Article 5.75-1, which was
27 enacted by Chapter 117, Acts of the 54th Legislature,
28 Regular Session, 1955, as Article 5.76 and was later
29 renumbered, and Article 5.75-3, which was enacted by
30 Chapter 42, Acts of the 68th Legislature, Regular
31 Session, 1983, are currently included in Subchapter F,
32 those articles were not included in the 1949 enactment
33 from which Article 5.75 is derived. In addition,
34 Articles 5.75-1 and 5.75-3 both include specific
35 applicability provisions. It is clear from the

1 history of Subchapter F and the language of Articles
2 5.75-1 and 5.75-3 that the legislature did not intend
3 for the reference in Article 5.75 to "[t]his
4 subchapter" to refer to Articles 5.75-1 and 5.75-3.
5 The revised law is drafted accordingly.

6 (2) V.T.I.C. Article 5.75 refers to "the kinds
7 of insurance and to the insurers subject to
8 Subchapters A, B, C, and D." Section (d), V.T.I.C.
9 Article 5.19, was included in Subchapter B, V.T.I.C.
10 Chapter 5, and is revised as Section 36.002 of this
11 code. The revised law does not reference Section
12 36.002 because that section only establishes
13 rulemaking authority for provisions otherwise
14 referenced in this section. V.T.I.C. Articles 5.12,
15 5.24, 5.49, and 5.68 were included in Subchapters A, B,
16 C, and D, respectively, and were revised, effective
17 April 1, 2005, in Chapters 251, 252, 253, 254, and 255
18 of this code. The revised law does not reference
19 Chapter 251 because it contains only general
20 provisions applicable in accordance with the other
21 listed provisions. V.T.I.C. Article 5.44 was included
22 in Subchapter C, V.T.I.C. Chapter 5, and was revised in
23 1987 as Section 417.008, Government Code. The revised
24 law does not reference Section 417.008, Government
25 Code, because that section does not apply to kinds of
26 insurance or insurers.

27 [Sections 1805.002-1805.050 reserved for expansion]

28 SUBCHAPTER B. ADVISORY ORGANIZATIONS

29 Revised Law

30 Sec. 1805.051. LICENSE APPLICATION. (a) A corporation,
31 unincorporated association, partnership, or individual may file
32 with the commissioner an application for an advisory organization
33 license for the kinds of insurance specified in the application.

34 (b) The applicant must:

1 (1) file with the commissioner:
2 (A) a copy of the applicant's:
3 (i) constitution and bylaws;
4 (ii) article of agreement or association or
5 certificate of incorporation; and
6 (iii) rules governing the applicant's
7 activities as an advisory organization; and
8 (B) a statement of qualifications to act as an
9 advisory organization; and
10 (2) pay a \$100 license fee. (V.T.I.C. Art. 5.73, Sec.
11 4A(b).)

12 Source Law

13 (b) A corporation, unincorporated association,
14 partnership, or individual may apply to the
15 commissioner for a license as an advisory organization
16 for the types of insurance the applicant specifies in
17 the application. An applicant must:

18 (1) file with the commissioner:
19 (A) a copy of the applicant's:
20 (i) constitution and bylaws;
21 (ii) article of agreement or
22 association, or certificate of incorporation; and
23 (iii) rules governing the
24 applicant's activities as an advisory organization;
25 and
26 (B) a statement of qualifications to
27 act as an advisory organization; and
28 (2) pay a \$100 license fee.

29 Revised Law

30 Sec. 1805.052. ISSUANCE OF LICENSE; TERM. (a) The
31 commissioner shall issue a license to an applicant the commissioner
32 determines is qualified, without regard to:

33 (1) the state of domicile or residence of the
34 applicant; or

35 (2) the location of the applicant's place of business.

36 (b) The commissioner shall grant or deny a license to an
37 applicant not later than the 60th day after the date the
38 commissioner receives the application.

39 (c) A license issued under this subchapter remains in effect
40 until the commissioner suspends or revokes the license. (V.T.I.C.
41 Art. 5.73, Secs. 4A(d), (e), (f).)

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(d) The commissioner shall issue a license to an applicant, without regard to the state of domicile or residence of the applicant or the location of the applicant's place of business if the commissioner determines that the applicant is qualified.

(e) The commissioner shall grant or deny a license to an applicant on or before the 60th day after the date the commissioner receives the application.

(f) A license issued under this article remains in effect until the commissioner suspends or revokes the license.

Revised Law

Sec. 1805.053. INFORMATION REPORTED BY ADVISORY ORGANIZATION. (a) An advisory organization may file with the commissioner prospective loss costs, supplementary rating information, and policy forms. A filing made by an advisory organization under this section is subject to the provisions of this code or other insurance laws of this state governing rate filings.

(b) An advisory organization at least quarterly shall file with the commissioner a list of:

(1) each subscriber company engaging in business in this state; and

(2) the products or information the subscriber company purchases.

(c) On request by the commissioner, an advisory organization shall provide to the department a summary of the actuarial assumptions, trend factors, economic factors, and other criteria used in trending data for companies engaging in business in this state. (V.T.I.C. Art. 5.73, Secs. 4A(a) (part), (g), (h).)

Source Law

Sec. 4A. (a) An advisory organization may file prospective loss costs, supplementary rating information, and policy forms with the commissioner. . . . A filing made by an advisory organization under this section is subject to the provisions of this code or the other insurance laws of this state governing rate filings.

(g) Each advisory organization shall file with the commissioner a list showing each subscriber company doing business in this state and the products or information the subscriber company purchases. The filing required by this subsection shall be made at least quarterly.

1 (h) On request by the commissioner, each
2 advisory organization shall report to the department a
3 summary of the actuarial assumptions, trend factors,
4 economic factors, and other criteria used in trending
5 data for companies doing business in this state.

6 Revised Law

7 Sec. 1805.054. INSURER'S AUTHORITY TO SUBSCRIBE TO ADVISORY
8 ORGANIZATION. An insurer engaging in business in this state may
9 subscribe to an advisory organization. (V.T.I.C. Art. 5.73, Sec. 1
10 (part).)

11 Source Law

12 Sec. 1. [Except as provided by Section 4A(c) of
13 this article,] an insurer transacting business in the
14 state may, but is not required to, subscribe to an
15 advisory organization and

16 Revised Law

17 Sec. 1805.055. SUBMISSION, RECEIPT, AND USE OF INFORMATION
18 BY INSURER. (a) Except as provided by Subsection (b), an insurer
19 may submit to or receive from an advisory organization the
20 following only if the advisory organization holds a license issued
21 under this subchapter:

- 22 (1) statistical plans;
23 (2) historical data;
24 (3) prospective loss costs;
25 (4) supplementary rating information;
26 (5) policy forms and endorsements;
27 (6) research;
28 (7) rates of individual insurers that are effective at
29 the time the information is submitted or received or that were
30 previously in effect; and
31 (8) performance of inspections.

32 (b) An insurer may not:

33 (1) accept from an advisory organization
34 recommendations for rates; or

35 (2) submit to or receive from an advisory organization
36 recommendations for profit or expenses other than loss adjustment
37 expenses.

38 (c) An insurer that subscribes to an advisory organization

1 may use prospective loss costs, supplementary rating information,
2 and policy forms filed by the advisory organization under Section
3 1805.053(a) and may incorporate the information into the insurer's
4 filings.

5 (d) Notwithstanding any other law, an insurer that reports
6 data under this subchapter is not relieved of the responsibility of
7 reporting that data directly to the department at the department's
8 request. (V.T.I.C. Art. 5.73, Secs. 1 (part), 2 (part), 4(c),
9 4A(a) (part), (c).)

10 Source Law

11 Art. 5.73

12 Sec. 1. Except as provided by Section 4A(c) of
13 this article, [an insurer transacting business in the
14 state may, but is not required to, subscribe to an
15 advisory organization and] is permitted to submit to
16 and receive from any advisory organization statistical
17 plans, historical data, prospective loss costs,
18 supplementary rating information, policy forms and
19 endorsements, research, rates of individual insurers
20 that are effective at the time the information is
21 submitted or received or that have been effective, and
22 performance of inspections except recommendations
23 regarding profit or expense provisions, other than
24 loss adjustment expenses.

25 Sec. 2. . . . no insurer may accept from an
26 advisory organization, recommendations for rates or
27 for profit and expenses other than loss adjustment
28 expenses.

29 [Sec. 4]

30 (c) Notwithstanding any provision to the
31 contrary, reporting of data by an insurer under this
32 article does not relieve the insurer of responsibility
33 of reporting that data directly to the Board at the
34 Board's request.

35 Sec. 4A. (a) [An advisory organization may file
36 prospective loss costs, supplementary rating
37 information, and policy forms with the commissioner.]
38 An insurer that subscribes to an advisory organization
39 may use this information and may incorporate the
40 information into the insurer's filings. . . .

41 (c) An insurer may not submit information to or
42 receive information from an advisory organization as
43 described by Section 1 of this article unless the
44 advisory organization holds a license issued under
45 this article.

46 Revisor's Note

47 Section 4(c), V.T.I.C. Article 5.73, refers to
48 the "Board," meaning the Board of Insurance
49 Commissioners. Under Chapter 499, Acts of the 55th
50 Legislature, Regular Session, 1957, administration of

1 the insurance laws of this state was reorganized and
2 the powers and duties of the Board of Insurance
3 Commissioners were transferred to the State Board of
4 Insurance. Chapter 685, Acts of the 73rd Legislature,
5 Regular Session, 1993, abolished the State Board of
6 Insurance and transferred its functions to the
7 commissioner of insurance and the Texas Department of
8 Insurance. Throughout this chapter, references to the
9 Board of Insurance Commissioners or the Board have
10 been changed appropriately.

11 Revised Law

12 Sec. 1805.056. AUDIT. (a) The department shall require
13 an annual audit of an advisory organization that provides
14 statistics or other information to the department in a proceeding
15 to set rates.

16 (b) The audit must:

17 (1) be conducted at the expense of the advisory
18 organization under rules adopted by the commissioner; and

19 (2) examine the advisory organization's method of
20 collecting, analyzing, and reporting data to ensure the accuracy of
21 data.

22 (c) The audit may examine source documents within
23 individual companies.

24 (d) Except for individual company information, an audit is
25 public information. (V.T.I.C. Art. 5.73, Sec. 4(a).)

26 Source Law

27 Sec. 4. (a) The Board shall annually require an
28 audit of any advisory organization that provides
29 statistics or other information to the Board in a
30 proceeding to set rates. The audit shall be conducted
31 under rules adopted by the Board, at the expense of the
32 advisory organization. The audit must examine the
33 advisory organization's method of collecting,
34 analyzing, and reporting data to assure the accuracy
35 of data. The audit may examine source documents within
36 individual companies. Except for individual company
37 information, an audit is public information.

38 Revised Law

39 Sec. 1805.057. RATE FILING REVIEW. The commissioner may:

1 (1) review the rate filing of an insurer that relies on
2 the prospective loss costs provided by an advisory organization;
3 and

4 (2) require the insurer to provide the insurer's
5 actual data and loss experience in addition to the information
6 provided by the advisory organization. (V.T.I.C. Art. 5.73, Sec.
7 4B.)

8 Source Law

9 Sec. 4B. The commissioner may review the rate
10 filing of an insurer that relies on the prospective
11 loss costs provided by an advisory organization and
12 may require the insurer to provide the insurer's actual
13 data and loss experience in addition to the
14 information provided by the advisory organization.

15 Revised Law

16 Sec. 1805.058. PROHIBITED ACTS. (a) An advisory
17 organization may not compile or distribute recommendations for:

18 (1) rates; or

19 (2) profit or expenses other than loss adjustment
20 expenses.

21 (b) An insurer or advisory organization may not:

22 (1) attempt to monopolize, combine, or conspire with
23 another person to monopolize an insurance market;

24 (2) engage in a boycott, on a concerted basis, of an
25 insurance market; or

26 (3) make an agreement with another insurer, advisory
27 organization, or person if the agreement has the purpose or effect
28 of restraining trade unreasonably or substantially lessening
29 competition in the business of insurance. (V.T.I.C. Art. 5.73,
30 Secs. 2 (part), 3(a), (b).)

31 Source Law

32 Sec. 2. No advisory organization shall compile
33 or distribute, and . . . recommendations for rates or
34 for profit and expenses other than loss adjustment
35 expenses.

36 Sec. 3. (a) An insurer or advisory organization
37 may not:

38 (1) attempt to monopolize, combine, or
39 conspire with any other person to monopolize an
40 insurance market; or

41 (2) engage in a boycott, on a concerted

1 basis, of an insurance market.

2 (b) An insurer or advisory organization may not
3 make an agreement with any other insurer, advisory
4 organization, or other person if the agreement has the
5 purpose or effect of restraining trade unreasonably or
6 of substantially lessening competition in the business
7 of insurance.

8 Revised Law

9 Sec. 1805.059. DISCIPLINARY ACTION. (a) If, after a
10 hearing, the commissioner determines that the furnishing of
11 specified services by an advisory organization involves an act or
12 practice that is unfair, unreasonable, or otherwise inconsistent
13 with this chapter or other applicable laws of this state, the
14 commissioner may issue a written order:

15 (1) specifying the manner in which the act or practice
16 is unfair, unreasonable, or inconsistent with the applicable law;
17 and

18 (2) requiring the advisory organization to
19 discontinue the act or practice.

20 (b) In addition to any other remedies available at law, the
21 commissioner may impose a sanction authorized under Chapter 82.
22 (V.T.I.C. Art. 5.73, Sec. 3(c).)

23 Source Law

24 (c) If, after a hearing, the Board finds that
25 the furnishing of specified services by an advisory
26 organization involves any act or practice which is
27 unfair or unreasonable or otherwise inconsistent with
28 the provisions of this subchapter or with the
29 applicable laws of this State, it may issue a written
30 order specifying in what respects such act or practice
31 is unfair or unreasonable or otherwise inconsistent
32 with the provisions of law and requiring the
33 discontinuance of such act or practice. In addition to
34 any other remedies available at law, the Board may
35 impose any sanction authorized under Article 1.10 of
36 this code.

37 Revisor's Note

38 Section 3(c), V.T.I.C. Article 5.73, authorizes
39 the Board of Insurance Commissioners to take certain
40 action against an advisory organization that provides
41 services involving an act or practice that is unfair,
42 unreasonable, or otherwise inconsistent with the
43 provisions of "this subchapter," meaning Subchapter F,

1 V.T.I.C. Chapter 5. The revised law substitutes a
2 reference to "this chapter" for the reference to "this
3 subchapter" and does not include a reference to
4 V.T.I.C. Articles 5.75-1 and 5.75-3, which are also
5 included in Subchapter F, V.T.I.C. Chapter 5, for the
6 reasons stated in Revisor's Note (1) to Section
7 1805.001.

8 Revised Law

9 Sec. 1805.060. SUNSET REVIEW. During the period in which
10 the Sunset Advisory Commission performs its review of the
11 department under Chapter 325, Government Code, the commission shall
12 review the authority granted under this subchapter. (V.T.I.C.
13 Art. 5.73, Sec. 5.)

14 Source Law

15 Sec. 5. The authority granted under this
16 article shall be reviewed during the normal Sunset
17 cycle of the Texas Department of Insurance.

18 Revisor's Note

19 Section 5, V.T.I.C. Article 5.73, provides that
20 the authority granted under the article is to be
21 reviewed during "the normal Sunset cycle" of the Texas
22 Department of Insurance. For the convenience of the
23 reader, the revised law adds a reference to the Sunset
24 Advisory Commission performing the review under
25 Chapter 325, Government Code.

26 Revised Law

27 Sec. 1805.061. CONFLICT WITH OTHER LAW. To the extent this
28 subchapter conflicts with Section 2053.052(c), 2053.055, 2053.151,
29 2053.152, or 2053.153, or Subchapter A or C, Chapter 2053, with
30 respect to the setting of rates for workers' compensation
31 insurance, the referenced provision of Chapter 2053 controls.
32 (V.T.I.C. Art. 5.73, Sec. 6.)

33 Source Law

34 Sec. 6. To the extent that this article
35 conflicts with the provisions of Articles 5.55, 5.58,
36 and 5.58A of this code with respect to the setting of

1 rates for workers' compensation insurance, the
2 provisions of those articles control.

3 Revisor's Note

4 Section 6, V.T.I.C. Article 5.73, refers to
5 conflicts between Article 5.73 and V.T.I.C. Article
6 5.58A. The revised law omits the reference to Article
7 5.58A because that article was repealed by Section
8 8.13, Chapter 685, Acts of the 73rd Legislature,
9 Regular Session, 1993.

10 Revisor's Note
11 (End of Subchapter)

12 Section 4D, V.T.I.C. Article 5.73, requires the
13 select committee on rate and form regulation to
14 appoint an independent consulting firm to evaluate the
15 activities of advisory organizations in this state.
16 The revised law omits Section 4D because that select
17 committee was abolished by Section 13.01, Chapter 876,
18 Acts of the 74th Legislature, Regular Session, 1995.
19 The omitted law reads:

20 Sec. 4D. The select committee on rate
21 and form regulation created under Article
22 1.50 of this code shall appoint an
23 independent consulting firm to evaluate the
24 activities of advisory organizations in
25 this state, including their impact on
26 competition in the insurance market, their
27 use by insurers, and their impact on
28 availability and affordability of coverage,
29 and any other matters relevant to
30 determining their continued authorization.
31 The committee shall include in its report to
32 the legislature a recommendation for the
33 future role of advisory organizations in
34 this state.

35 [Sections 1805.062-1805.100 reserved for expansion]

36 SUBCHAPTER C. EXAMINATIONS

37 Revised Law

38 Sec. 1805.101. EXAMINATION AUTHORIZED. (a) As often as
39 the department determines expedient, the department may examine a
40 group, association, or other organization referred to in this
41 chapter, including an advisory organization described by
42 Subchapter B.

1 (b) An officer, manager, agent, or employee of the group,
2 association, or organization may be examined at any time under oath
3 and shall make available any book, record, account, document, or
4 agreement governing the method of operation of the group,
5 association, or organization. (V.T.I.C. Art. 5.73, Sec. 4(b);
6 Art. 5.74 (part).)

7 Source Law

8 [Art. 5.73, Sec. 4]

9 (b) An advisory organization is subject to
10 examination under Article 5.74 of this code.

11 Art. 5.74. The said Board may, as often as it
12 may deem it expedient, make or cause to be made an
13 examination of each group, association, or other
14 organization referred to in Articles 5.72 and 5.73 of
15 this subchapter. . . . The officer, manager, agents
16 and employees of such group, association or other
17 organization may be examined at any time under oath and
18 shall exhibit all books, records, accounts, documents,
19 or agreements governing its method of operation. . . .

20 Revisor's Note

21 V.T.I.C. Article 5.74 refers to each group,
22 association, or other organization referred to in
23 "Articles 5.72 and 5.73 of this subchapter." V.T.I.C.
24 Articles 5.72 and 5.73 are revised in this chapter as
25 Subchapters B, C, and D. The revised law substitutes
26 for the quoted language a reference to "this chapter"
27 because the groups, associations, and other
28 organizations referred to in Articles 5.72 and 5.73
29 are the only organizations regulated under this
30 chapter.

31 Revised Law

32 Sec. 1805.102. EXAMINATION COSTS. The group, association,
33 or other organization shall pay the reasonable costs of an
34 examination under this subchapter on presentation of a detailed
35 account of the costs. (V.T.I.C. Art. 5.74 (part).)

36 Source Law

37 Art. 5.74. . . . The reasonable costs of any
38 such examination shall be paid by the group,
39 association or other organization examined upon
40 presentation to it of a detailed account of such
41 costs. . . .

1 Revised Law

2 Sec. 1805.103. OUT-OF-STATE EXAMINATION. In lieu of an
3 examination under this subchapter, the department may accept the
4 report of an examination made by the insurance supervisory official
5 of another state in accordance with the laws of that state.
6 (V.T.I.C. Art. 5.74 (part).)

7 Source Law

8 Art. 5.74. . . . In lieu of any such
9 examination the Board may accept the report of an
10 examination made by the insurance supervisory official
11 of another state, pursuant to the laws of such state.

12 [Sections 1805.104-1805.150 reserved for expansion]

13 SUBCHAPTER D. CERTAIN PRACTICES IN JOINT UNDERWRITING OR JOINT

14 REINSURANCE

15 Revised Law

16 Sec. 1805.151. AUTHORITY OF COMMISSIONER. If, after a
17 hearing, the commissioner determines that an activity or practice
18 of a group, association, or other organization of insurers engaging
19 in joint underwriting or joint reinsurance is unfair, unreasonable,
20 or otherwise inconsistent with this chapter or other applicable
21 law, the commissioner may issue a written order:

22 (1) specifying the manner in which the activity or
23 practice is unfair, unreasonable, or inconsistent with the
24 applicable law; and

25 (2) requiring the group, association, or organization
26 to discontinue the activity or practice. (V.T.I.C. Art. 5.72.)

27 Source Law

28 Art. 5.72. (a) Every group, association or
29 other organization of insurers which engages in joint
30 underwriting or joint reinsurance, shall be subject to
31 regulation with respect thereto as herein provided.

32 (b) If, after a hearing, the Board of Insurance
33 Commissioners finds that any activity or practice of
34 any such group, association or other organization is
35 unfair or unreasonable or otherwise inconsistent with
36 the provisions of this subchapter or with the laws
37 applicable thereto, it may issue a written order
38 specifying in what respects such activity or practice
39 is unfair or unreasonable or otherwise inconsistent
40 with the provisions of the applicable laws, and
41 requiring the discontinuance of such activity or
42 practice.

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Revisor's Note

V.T.I.C. Article 5.72 authorizes the Board of Insurance Commissioners to take certain action against a group, association, or other organization of insurers that engages in joint underwriting or joint reinsurance if an act or practice of the group, association, or organization is unfair, unreasonable, or otherwise inconsistent with "this subchapter," meaning Subchapter F, V.T.I.C. Chapter 5. The revised law substitutes a reference to "this chapter" for the reference to "this subchapter" and does not include a reference to V.T.I.C. Articles 5.75-1 and 5.75-3, which are also included in Subchapter F, V.T.I.C. Chapter 5, for the reasons stated in Revisor's Note (1) to Section 1805.001.

CHAPTER 1806. PROHIBITED PRACTICES AND REBATES RELATED TO POLICIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1806.001. DEFINITION 814

[Sections 1806.002-1806.050 reserved for expansion]

SUBCHAPTER B. PROVISIONS APPLICABLE TO AUTOMOBILE INSURANCE

Sec. 1806.051. APPLICABILITY OF SUBCHAPTER 815

Sec. 1806.052. CONSTRUCTION OF SUBCHAPTER 816

Sec. 1806.053. DISCRIMINATIONS OR DISTINCTIONS 819

Sec. 1806.054. OTHER PROHIBITED INDUCEMENTS 820

Sec. 1806.055. PROFIT SHARING AUTHORIZED; CERTAIN PROHIBITIONS 821

Sec. 1806.056. PROFIT SHARING BASED ON COMBAT DUTY AUTHORIZED 822

Sec. 1806.057. PROFIT SHARING WITH MEMBERS OF CERTAIN ASSOCIATIONS AUTHORIZED 824

Sec. 1806.058. PARTICIPATING POLICIES 824

[Sections 1806.059-1806.100 reserved for expansion]

SUBCHAPTER C. PROVISIONS APPLICABLE TO CASUALTY INSURANCE

AND FIDELITY, GUARANTY, AND SURETY BONDS

1 Sec. 1806.101. DEFINITIONS 826

2 Sec. 1806.102. APPLICABILITY OF SUBCHAPTER 826

3 Sec. 1806.103. CONSTRUCTION OF SUBCHAPTER 829

4 Sec. 1806.104. PROHIBITED ACTS 831

5 Sec. 1806.105. PROFIT SHARING AUTHORIZED; CERTAIN

6 PROHIBITIONS 833

7 Sec. 1806.106. PROFIT SHARING WITH CERTAIN

8 ASSOCIATIONS AUTHORIZED 835

9 Sec. 1806.107. ENFORCEMENT 836

10 [Sections 1806.108-1806.150 reserved for expansion]

11 SUBCHAPTER D. PROVISIONS APPLICABLE TO FIRE INSURANCE

12 AND ALLIED LINES

13 Sec. 1806.151. APPLICABILITY OF SUBCHAPTER 836

14 Sec. 1806.152. CONSTRUCTION OF SUBCHAPTER 839

15 Sec. 1806.153. UNJUST DISCRIMINATION; REBATES 839

16 Sec. 1806.154. PROFIT SHARING AUTHORIZED 841

17 Sec. 1806.155. INSURER LIABILITY ON POLICY ISSUED

18 WITHOUT AUTHORITY 842

19 Sec. 1806.156. ACCEPTANCE OF REBATE OR OTHER

20 INDUCEMENT; CRIMINAL PENALTY 843

21 CHAPTER 1806. PROHIBITED PRACTICES AND REBATES RELATED TO POLICIES

22 SUBCHAPTER A. GENERAL PROVISIONS

23 Revised Law

24 Sec. 1806.001. DEFINITION. In this chapter, "nonprofit

25 business association" means a business association that is a

26 nonprofit corporation exempt from federal income taxation under

27 Section 501(a), Internal Revenue Code of 1986, and its subsequent

28 amendments by being described as an exempt organization by Section

29 501(c)(6) of that code. (V.T.I.C. Art. 5.08, Sec. (d) (part); Art.

30 5.20, Sec. (c) (part).)

31 Source Law

32 [Art. 5.08]

33 (d) . . . For purposes of this subsection,

34 "nonprofit business association" means a business

35 association that is a nonprofit corporation exempt

36 from federal income tax under Section 501(a) of the

1 Internal Revenue Code of 1986, and its subsequent
2 amendments, by being listed as an exempt organization
3 under Section 501(c)(6) of that code.

4 [Art. 5.20]

5 (c) . . . For purposes of this subsection,
6 "nonprofit business association" means a business
7 association that is a nonprofit corporation exempt
8 from federal income tax under Section 501(a) of the
9 Internal Revenue Code of 1986, and its subsequent
10 amendments, by being listed as an exempt organization
11 under Section 501(c)(6) of that code.

12 [Sections 1806.002-1806.050 reserved for expansion]

13 SUBCHAPTER B. PROVISIONS APPLICABLE TO AUTOMOBILE INSURANCE

14 Revised Law

15 Sec. 1806.051. APPLICABILITY OF SUBCHAPTER. This
16 subchapter applies to an insurer writing automobile insurance in
17 this state, including an insurance company, corporation,
18 reciprocal or interinsurance exchange, mutual insurance company,
19 association, Lloyd's plan, or other insurer. (V.T.I.C. Art. 5.01,
20 Sec. (a) (part); Art. 5.08, Sec. (a) (part); Art. 5.09, Sec. (a)
21 (part).)

22 Source Law

23 Art. 5.01. (a) Every insurance company,
24 corporation, interinsurance exchange, mutual,
25 reciprocal, association, Lloyd's or other insurer,
26 hereinafter called insurer, writing any form of motor
27 vehicle insurance in this State, [shall annually file]
28

29 Art. 5.08. (a) . . . [it shall be unlawful for
30 any insurer,] as defined in this subchapter, . . . [to
31 grant to or contract with insured]

32 Art. 5.09. (a) . . . [no insurer] coming
33 within the terms of this subchapter [shall . . . make
34 or permit any distinction]

35 Revisor's Note

36 (1) Section (a), V.T.I.C. Article 5.01, refers
37 to an "interinsurance exchange," a "mutual," a
38 "reciprocal," and a "Lloyd's." For consistent use of
39 terminology throughout this code, the revised law
40 substitutes for the quoted language references to a
41 "reciprocal or interinsurance exchange," a "mutual
42 insurance company," and a "Lloyd's plan." Similar
43 changes have been made throughout this chapter.

1 (2) Section (a), V.T.I.C. Article 5.01, refers
2 to "motor vehicle insurance." The revised law
3 substitutes "automobile insurance" for "motor vehicle
4 insurance" in this section and throughout this chapter
5 for consistency with terminology used in this code and
6 because "automobile insurance" is the term more
7 commonly used to describe the kind of insurance that
8 provides coverage for motor vehicles.

9 Revised Law

10 Sec. 1806.052. CONSTRUCTION OF SUBCHAPTER. This subchapter
11 may not be construed to prohibit the modification of rates by a
12 rating plan that is filed in accordance with the requirements of
13 Chapter 2251 or Article 5.13-2, as applicable, that has not been
14 disapproved by the commissioner, and that is designed to encourage
15 the prevention of accidents, and to account for all relevant
16 factors inside and outside this state, including the peculiar
17 hazards and experience of past and prospective individual risks.
18 (V.T.I.C. Art. 5.09, Sec. (a) (part).)

19 Source Law

20 (a) . . . provided that nothing in this
21 subchapter shall be construed to prohibit the
22 modification of rates by rating plans designed to
23 encourage the prevention of accidents, and to take
24 account of the peculiar hazards and experience of
25 individual risks, past and prospective, within and
26 outside the State, and of all other relevant factors,
27 within and outside the State, provided such plan shall
28 have been approved by the Board.

29 Revisor's Note

30 (1) Section (a), V.T.I.C. Article 5.09, states
31 that "this subchapter," meaning Subchapter A, V.T.I.C.
32 Chapter 5, may not be construed to prohibit certain
33 modifications of rates. Subchapter A, Chapter 5, is
34 revised in various chapters in this code. The only
35 provisions of Subchapter A that could be interpreted
36 to prohibit the modification of rates are revised in
37 this subchapter. The revised law is drafted
38 accordingly.

1 (2) Section (a), V.T.I.C. Article 5.09,
2 requires that certain rating plans be approved by the
3 State Board of Insurance, formerly the Board of
4 Insurance Commissioners. Under Chapter 499, Acts of
5 the 55th Legislature, Regular Session, 1957,
6 administration of the insurance laws of this state was
7 reorganized and the powers and duties of the Board of
8 Insurance Commissioners were transferred to the State
9 Board of Insurance. Chapter 685, Acts of the 73rd
10 Legislature, Regular Session, 1993, abolished the
11 board and transferred its functions to the
12 commissioner of insurance and the Texas Department of
13 Insurance. For that reason, references to the Board of
14 Insurance Commissioners and State Board of Insurance
15 have been changed appropriately throughout this
16 chapter.

17 In addition, under Chapter 206, Acts of the 78th
18 Legislature, Regular Session, 2003, the legislature
19 amended V.T.I.C. Article 5.13-2 to apply on and after
20 June 11, 2003, to commercial automobile insurance, and
21 on and after December 1, 2004, to both personal and
22 commercial automobile insurance. As a result, all
23 rates applicable to automobile insurance are now
24 governed by Article 5.13-2, the relevant portions of
25 which that are revised are contained in Chapter 2251 of
26 this code.

27 Under the rate regulation system established by
28 Article 5.13-2, most insurers to which the article
29 applies are required to file rates and supplementary
30 rating information, including rating plans, with the
31 commissioner and are authorized to use a rate unless
32 the rate filing or the rate is disapproved by the
33 commissioner. However, under certain circumstances,
34 the commissioner is authorized to require an insurer

1 to file rates and supplementary rating information and
2 obtain approval before using the rate or to require use
3 of a different regulatory system. Because the rate
4 regulation system established by Article 5.13-2
5 requires the absence of the commissioner's disapproval
6 of a rate or rate filing under certain circumstances,
7 but has different requirements under other
8 circumstances, the revised law substitutes a reference
9 to a rating plan "that is filed in accordance with the
10 requirements of Chapter 2251 or Article 5.13-2" and
11 "that has not been disapproved by the commissioner"
12 for the requirement that the rating plan be approved by
13 the commissioner to accurately reflect the regulatory
14 system established under Article 5.13-2. In addition,
15 although Chapter 2251 contains provisions that are
16 derived from V.T.I.C. Article 5.13-2C, the revised law
17 appropriately refers to the chapter in its entirety
18 because the provisions that are derived from Article
19 5.13-2C do not relate to rating plans for automobile
20 insurance.

21 (3) Section (c), V.T.I.C. Article 5.09,
22 specifies the provisions of this code under which
23 rates for automobile insurance are determined. The
24 revised law omits the provisions of Section (c),
25 Article 5.09, relating to rate regulation before
26 December 1, 2004, as executed, and omits the
27 provisions of that section relating to rate regulation
28 on and after December 1, 2004, as unnecessary because
29 V.T.I.C. Article 5.13-2, the relevant portions of
30 which that are revised are contained in Chapter 2251 of
31 this code, applies by its own terms to personal and
32 commercial automobile insurance. The omitted law
33 reads:

34 (c) Notwithstanding Subsection (a)

1 of this article, on and after the effective
2 date of S.B. No. 14, Acts of the 78th
3 Legislature, Regular Session, 2003, rates
4 for personal automobile insurance in this
5 state are determined as provided by Article
6 5.101 of this code, and rates for commercial
7 motor vehicle insurance in this state are
8 determined as provided by Article 5.13-2 of
9 this code. On and after December 1, 2004,
10 rates for personal automobile insurance and
11 commercial automobile insurance in this
12 state are determined as provided by Article
13 5.13-2 of this code.

14 Revised Law

15 Sec. 1806.053. DISCRIMINATIONS OR DISTINCTIONS. Except as
16 provided by Section 1806.056, with respect to business written in
17 this state:

18 (1) an insurer may not discriminate or make a
19 distinction, or permit discrimination or a distinction to be made,
20 among insureds having like hazards with respect to premiums charged
21 for, or dividends or other benefits payable under, an insurance
22 policy;

23 (2) an insurer or an insurer's agent may not make an
24 insurance contract or an agreement relating to that insurance,
25 other than as expressed in the policy; and

26 (3) an insurer or an insurer's agent or other
27 representative may not directly or indirectly pay, allow, or give,
28 or offer to pay, allow, or give, as an inducement to the insured, a
29 rebate payable on the policy or a special favor or advantage in the
30 dividends or other benefits to accrue, or anything of value, not
31 specified in the policy. (V.T.I.C. Art. 5.09, Sec. (a) (part).)

32 Source Law

33 Art. 5.09. (a) Except as provided by Subsection
34 (b) of this article, no insurer . . . shall, in its
35 business in this State, make or permit any distinction
36 or discrimination in favor of the insured having a like
37 hazard, in the matter of the charge of premiums for
38 insurance, or in dividends or other benefits payable
39 under any policy, nor shall any such insurer or agent
40 make any contract of insurance, or agreement as to such
41 insurance, other than expressed in the policy, nor
42 shall any such insurer or its agents or
43 representatives pay, allow or give, or offer to pay,
44 allow or give, directly or indirectly, as an
45 inducement to insured, any rebate payable upon the
46 policy or any special favor or advantage in dividends
47 or other benefits to accrue, or anything of value
48 whatsoever, not specified in the policy;

1 Revised Law

2 Sec. 1806.054. OTHER PROHIBITED INDUCEMENTS. Except as
3 provided by Section 1806.055, 1806.056, or 1806.057, an insurer or
4 an insurer's officer, director, agent, or other representative may
5 not, for the purpose of writing the insurance of an insured, grant
6 to the insured or contract with the insured for a special favor or
7 advantage in dividends or other profits, or commissions or
8 dividends of commissions or profits to accrue on the policy, or
9 compensation or other valuable consideration not specified in the
10 policy, or an inducement not specified in the policy. (V.T.I.C.
11 Art. 5.08, Sec. (a) (part).)

12 Source Law

13 Art. 5.08. (a) Except as provided by this
14 article, it shall be unlawful for any insurer, . . . or
15 its officers, directors, general agent, state agents,
16 special agents, local agents or other representatives,
17 to grant to or contract with insured for any special
18 favor or advantage in dividends or other profits, or
19 any commissions or dividends of commissions or profits
20 to accrue thereon, or any compensation or any valuable
21 consideration not specified in the policy contract, or
22 any inducement not specified in the policy contract,
23 for the purpose of writing the insurance of any
24 insured.

25 Revisor's Note

26 (1) Section (a), V.T.I.C. Article 5.08, refers
27 to the "general agent, state agents, special agents,
28 [and] local agents" of an automobile insurer. The
29 terms are obsolete terms that describe the types of
30 agents that may represent an automobile insurer.
31 Therefore, the revised law omits "general agent,"
32 "state agents," "special agents," and "local agents"
33 as obsolete terms that are included within the meaning
34 of "agent or other representative." Similar changes
35 have been made throughout this chapter.

36 (2) Section (a), V.T.I.C. Article 5.08, refers
37 to an insurance "policy contract." The revised law
38 substitutes the term "policy" for "policy contract"
39 because a contract between an insurer and an insured is

1 more commonly referred to as a policy. Similar changes
2 have been made throughout this chapter.

3 Revised Law

4 Sec. 1806.055. PROFIT SHARING AUTHORIZED; CERTAIN
5 PROHIBITIONS. (a) Section 1806.054 does not prohibit an insurer
6 from sharing earned profits with the insurer's policyholders under
7 a profit sharing agreement contained in the policy if:

8 (1) the insurer shares profits uniformly among those
9 insured under the policy; and

10 (2) the insurer distributes earnings equitably among
11 those insureds under the terms of the policy.

12 (b) An insurer may not:

13 (1) discriminate in the distribution of profits among
14 insureds of the same class;

15 (2) distribute the profit to an insured before the
16 expiration of the policy; or

17 (3) establish a class of insureds for the distribution
18 of profits, except on the commissioner's approval.

19 (c) A violation of this section is unjust discrimination and
20 rebating.

21 (d) The commissioner may revoke the certificate of
22 authority of an insurer that violates this section or the license of
23 an agent who violates this section. (V.T.I.C. Art. 5.08, Sec. (b).)

24 Source Law

25 (b) Nothing in this article, however, shall be
26 construed to prohibit an insurer from sharing its
27 profits after the same have been earned with its
28 policyholders under and in accordance with an
29 agreement as to such profit sharing contained in its
30 policy contract. Any profit sharing under any policy
31 with insured shall be uniform as between such insured,
32 and shall consist only and solely of an equitable
33 distribution under and in accordance with the terms of
34 the policy of earnings between such insured, and no
35 such insurer shall discriminate in any distribution of
36 profits between insured of a class, and no classes for
37 such distribution shall be made or established except
38 on the approval of the commissioner. No part of any
39 profit shall be distributed to any insured under any
40 such policy until the expiration of the policy
41 contract. Any violation of the terms of this
42 subsection shall constitute unjust discrimination and
43 shall constitute rebating, and shall be sufficient

1 grounds for the revocation of the permit of the insurer
2 or of the license of the agent being guilty of such
3 unjust discrimination and rebating.

4 Revisor's Note

5 (1) Section (b), V.T.I.C. Article 5.08, refers
6 to insurers sharing earned profits with policyholders
7 "under and in accordance with" a profit sharing
8 agreement and the policy. The revised law omits "in
9 accordance with" as included within the meaning of
10 "under."

11 (2) Section (b), V.T.I.C. Article 5.08, refers
12 to classes of insureds "made or established" by an
13 insurer. The reference to "made" is omitted from the
14 revised law because the terms are synonymous and the
15 latter is more commonly used.

16 (3) Section (b), V.T.I.C. Article 5.08, refers
17 to an insurer's "permit." Throughout this chapter, the
18 revised law substitutes "certificate of authority" for
19 "permit" because, in this context, "certificate of
20 authority" is the term used throughout this code in
21 relation to an entity's authority to engage in
22 business.

23 Revised Law

24 Sec. 1806.056. PROFIT SHARING BASED ON COMBAT DUTY
25 AUTHORIZED. (a) This subchapter does not prohibit an insurer, on
26 approval by the commissioner, from distributing to policyholders
27 who are on active duty in the United States Armed Forces any
28 estimated profits resulting from service by those policyholders in
29 a foreign country in a combat theater of operations after January 1,
30 1990.

31 (b) An insurer that elects to make distributions under this
32 section must:

33 (1) file a written description of the insurer's
34 distribution program with the commissioner for approval; and

35 (2) notify the commissioner in writing of each

1 distribution made under the program.

2 (c) If the commissioner does not act on the insurer's
3 distribution program on or before the fifth business day after the
4 date the commissioner receives the insurer's description of the
5 program, the distribution program is considered approved.

6 (d) An insurer may distribute estimated profits among
7 policyholders under this section based on:

8 (1) the time served by a policyholder in a combat
9 theater of operations;

10 (2) the location of the policyholder's military
11 service;

12 (3) the duration of the applicable insurance policy;
13 or

14 (4) any other reasonable basis. (V.T.I.C. Art. 5.08,
15 Sec. (c); Art. 5.09, Sec. (b).)

16 Source Law

17 [Art. 5.08]

18 (c) This article does not prohibit an insurer,
19 on approval by the commissioner, from distributing to
20 policyholders who are on active duty in the United
21 States Armed Forces any estimated profits resulting
22 from service by those policyholders in any foreign
23 country in a combat theater of operations at any time
24 after January 1, 1990. An insurer that elects to make
25 such distributions shall file a written description of
26 its distribution program with the commissioner for
27 approval by the commissioner and shall notify the
28 commissioner in writing of each distribution made
29 under the program. The insurer may distribute the
30 estimated profits among those policyholders based on
31 the length of time served by a policyholder in a combat
32 theater of operations, the location of the military
33 service, the duration of the applicable insurance
34 policy, or any other reasonable basis. The
35 commissioner shall act on the insurer's distribution
36 program within five business days of receipt of the
37 insurer's distribution program, otherwise the
38 distribution program shall be deemed approved.

39 [Art. 5.09]

40 (b) This article does not prohibit an insurer,
41 on approval by the Board, from distributing to
42 policyholders who are on active duty in the United
43 States Armed Forces any estimated profits resulting
44 from service by those policyholders in any foreign
45 country in a combat theater of operations at any time
46 after January 1, 1990. An insurer that elects to make
47 such distributions shall file a written description of
48 its distribution program with the Board for approval
49 by the Board and shall notify the Board in writing of
50 each distribution made under the program. The insurer

1 may distribute the estimated profits among those
2 policyholders based on the length of time served by a
3 policyholder in a combat theater of operations, the
4 location of the military service, the duration of the
5 applicable insurance policy, or any other reasonable
6 basis. The Board shall act on the insurer's
7 distribution program within five business days of
8 receipt of the insurer's distribution program,
9 otherwise the distribution program shall be deemed
10 approved.

11 Revised Law

12 Sec. 1806.057. PROFIT SHARING WITH MEMBERS OF CERTAIN
13 ASSOCIATIONS AUTHORIZED. (a) Section 1806.054 does not prohibit
14 an insurer, on approval by the commissioner, from sharing profits
15 with policyholders who are part of a group program established by a
16 nonprofit business association and who participate in the group
17 program because of membership in the association.

18 (b) An insurer that elects to make distributions under this
19 section must:

20 (1) file a written description of the insurer's
21 distribution program with the commissioner for approval; and

22 (2) notify the commissioner in writing of each
23 distribution made under the program.

24 (c) If the commissioner does not act on the insurer's
25 distribution program on or before the fifth business day after the
26 date the commissioner receives the insurer's description of the
27 program, the distribution program is considered approved.

28 (V.T.I.C. Art. 5.08, Sec. (d) (part).)

29 Source Law

30 (d) This article does not prohibit an insurer,
31 on approval by the commissioner, from sharing profits
32 with policyholders who are part of a group program
33 established by a nonprofit business association and
34 who participate in the group program because of
35 membership in the association. An insurer that elects
36 to make distributions under this subsection shall file
37 a written description of its distribution program with
38 the commissioner for approval by the commissioner and
39 shall notify the commissioner in writing of each
40 distribution made under the program. The commissioner
41 shall act on the insurer's distribution program within
42 five business days of receipt of the insurer's
43 distribution program, otherwise the distribution
44 program shall be deemed approved. . . .

45 Revised Law

46 Sec. 1806.058. PARTICIPATING POLICIES. (a) This

1 subchapter, Subtitle C, and Subchapter A, Chapter 5, may not be
2 construed to prohibit:

3 (1) a stock company, mutual insurance company,
4 reciprocal or interinsurance exchange, or Lloyd's plan from
5 operating under this subchapter, Subchapter A, Chapter 5, and
6 Subtitle C; or

7 (2) a stock company, mutual insurance company,
8 reciprocal or interinsurance exchange, or Lloyd's plan from issuing
9 participating policies.

10 (b) A distribution of profits or dividends to insureds may
11 not take effect or be paid until the commissioner approves the
12 distribution. The commissioner may not approve a distribution of
13 profits or dividends until the insurer has provided adequate
14 reserves. The reserves must be computed on the same basis for all
15 classes of insurers operating under this subchapter, Subtitle C,
16 and Subchapter A, Chapter 5. (V.T.I.C. Art. 5.07.)

17 Source Law

18 Art. 5.07. Nothing in this subchapter shall be
19 construed to prohibit the operation hereunder of any
20 stock company, mutual company, reciprocal or
21 interinsurance exchange or Lloyd's association or to
22 prohibit any stock company, mutual company, reciprocal
23 or interinsurance exchange or Lloyd's association
24 issuing participating policies; provided no
25 distribution of profit or dividends to insured shall
26 take effect or be paid until the same shall have been
27 approved by the Board; and provided further that no
28 such distribution shall be approved until adequate
29 reserves shall have been provided, such reserves to be
30 computed on the same basis for all classes of insurers
31 operating under this subchapter.

32 Revisor's Note

33 V.T.I.C. Article 5.07 refers to "this
34 subchapter," meaning Subchapter A, V.T.I.C. Chapter 5.
35 Parts of that subchapter are revised in various
36 chapters in this code, and of those parts, the relevant
37 provisions are revised in this subchapter and Subtitle
38 C, Title 10, of this code. For that reason, the
39 revised law substitutes a reference to "[t]his
40 subchapter, Subtitle C, and Subchapter A, Chapter 5"

1 for the reference to "this subchapter."

2 [Sections 1806.059-1806.100 reserved for expansion]

3 SUBCHAPTER C. PROVISIONS APPLICABLE TO CASUALTY INSURANCE AND
4 FIDELITY, GUARANTY, AND SURETY BONDS

5 Revised Law

6 Sec. 1806.101. DEFINITIONS. In this subchapter:

7 (1) "Insurance" includes a suretyship.

8 (2) "Policy" includes a bond. (V.T.I.C. Art. 5.20,
9 Sec. (d).)

10 Source Law

11 (d) As used in this article the word "insurance"
12 includes suretyship, and the word "policy" includes
13 bond.

14 Revised Law

15 Sec. 1806.102. APPLICABILITY OF SUBCHAPTER. (a) Except as
16 provided by Subsections (b) and (c), this subchapter applies to an
17 insurer, including a corporation, reciprocal or interinsurance
18 exchange, mutual insurance company, association, Lloyd's plan, or
19 other organization, writing casualty insurance or writing
20 fidelity, surety, or guaranty bonds, on risks or operations in this
21 state.

22 (b) This subchapter does not apply to:

23 (1) a farm mutual insurance company or association
24 regulated under Chapter 911; or

25 (2) a county mutual insurance company regulated under
26 Chapter 912.

27 (c) This subchapter does not apply to the writing of:

28 (1) automobile insurance;

29 (2) life, health, or accident insurance;

30 (3) professional liability insurance;

31 (4) reinsurance;

32 (5) aircraft insurance;

33 (6) fraternal benefit insurance;

34 (7) fire insurance;

35 (8) workers' compensation insurance;

1 (9) marine insurance, including noncommercial inland
2 marine insurance and ocean marine insurance;

3 (10) title insurance;

4 (11) explosion insurance, except insurance against
5 loss from personal injury or property damage resulting accidentally
6 from:

7 (A) a steam boiler;

8 (B) a heater or pressure vessel;

9 (C) an electrical device;

10 (D) an engine; or

11 (E) all machinery and appliances used in
12 connection with or in the operation of a boiler, heater, vessel,
13 electrical device, or engine described by Paragraphs (A)-(D); or

14 (12) insurance coverage for any of the following
15 conditions or risks:

16 (A) weather or climatic conditions, including
17 lightning, tornado, windstorm, hail, cyclone, rain, or frost and
18 freeze;

19 (B) earthquake or volcanic eruption;

20 (C) smoke or smudge;

21 (D) excess or deficiency of moisture;

22 (E) flood;

23 (F) the rising water of an ocean or an ocean's
24 tributary;

25 (G) bombardment, invasion, insurrection, riot,
26 civil war or commotion, military or usurped power, or any order of a
27 civil authority made to prevent the spread of a conflagration,
28 epidemic or catastrophe;

29 (H) vandalism or malicious mischief;

30 (I) strike or lockout;

31 (J) water or other fluid or substance resulting
32 from:

33 (i) the breakage or leakage of a sprinkler,
34 pump, or other apparatus erected for extinguishing fire, or a water

1 pipe or other conduit or container; or

2 (ii) casual water entering a building
3 through a leak or opening in the building or by seepage through
4 building walls; or

5 (K) accidental damage to a sprinkler, pump, fire
6 apparatus, pipe, or other conduit or container described by
7 Paragraph (J)(i). (V.T.I.C. Art. 5.13, Secs. (a) (part), (b),
8 (c).)

9 Source Law

10 Art. 5.13. (a) This subchapter applies to every
11 insurance company, corporation, interinsurance
12 exchange, mutual, reciprocal, association, Lloyd's
13 plan, or other organization or insurer writing any of
14 the characters of insurance business herein set forth,
15 hereinafter called "Insurer"; provided that nothing in
16 this entire subchapter shall be construed to apply to
17 any county or farm mutual insurance company or
18 association, as regulated under Chapters 911 and 912
19 of this code,

20 (b) This subchapter applies to the writing of
21 casualty insurance and the writing of fidelity,
22 surety, and guaranty bonds, on risks or operations in
23 this State except as herein stated.

24 (c) Except as otherwise provided by this
25 subchapter, this subchapter does not apply to the
26 writing of motor vehicle, life, health, accident,
27 professional liability, reinsurance, aircraft,
28 fraternal benefit, fire, lightning, tornado,
29 windstorm, hail, smoke or smudge, cyclone, earthquake,
30 volcanic eruption, rain, frost and freeze, weather or
31 climatic conditions, excess or deficiency of moisture,
32 flood, the rising of the waters of the ocean or its
33 tributaries, bombardment, invasion, insurrection,
34 riot, civil war or commotion, military or usurped
35 power, any order of a civil authority made to prevent
36 the spread of a conflagration, epidemic or
37 catastrophe, vandalism or malicious mischief, strike
38 or lockout, water or other fluid or substance,
39 resulting from the breakage or leakage of sprinklers,
40 pumps, or other apparatus erected for extinguishing
41 fires, water pipes or other conduits or containers, or
42 resulting from casual water entering through leaks or
43 opening in buildings or by seepage through building
44 walls, including insurance against accidental injury
45 of such sprinklers, pumps, fire apparatus, conduits or
46 container, workers' compensation, noncommercial
47 inland marine, ocean marine, marine, or title
48 insurance; nor does this subchapter apply to the
49 writing of explosion insurance, except insurance
50 against loss from injury to person or property which
51 results accidentally from steam boilers, heaters or
52 pressure vessels, electrical devices, engines and all
53 machinery and appliances used in connection therewith
54 or operation thereby.

55 Revisor's Note

56 (1) V.T.I.C. Article 5.13 refers to "this

1 subchapter," meaning Subchapter B, V.T.I.C. Chapter 5.
2 Subchapter B, Chapter 5, is revised in various
3 chapters in this title. The revised law substitutes a
4 reference to "this subchapter" of the revised law for
5 the reference to "this subchapter" because the
6 substance of Article 5.13 is repeated in each of the
7 chapters of this title in which other articles from
8 Subchapter B, V.T.I.C. Chapter 5, are revised.

9 (2) Section (a), V.T.I.C. Article 5.13, states
10 that the law revised in this subchapter does not apply
11 to a "county or farm mutual insurance company or
12 association, as regulated under Chapters 911 and 912
13 of this code." The only applicable references to an
14 "association" are in Chapter 911 of this code, which
15 regulates farm mutual insurance companies. The
16 revised law is drafted accordingly.

17 (3) Section (c), V.T.I.C. Article 5.13, states
18 that "[e]xcept as otherwise provided by this
19 subchapter," meaning Subchapter B, V.T.I.C. Chapter 5,
20 "this subchapter" does not apply to the writing of
21 certain insurance, including "motor vehicle"
22 insurance. The revised law omits the reference to
23 "[e]xcept as otherwise provided by this subchapter" as
24 unnecessary because the portions of Subchapter B,
25 Chapter 5, that are revised in this subchapter do not
26 contain any exception to the general statement of
27 inapplicability.

28 Revised Law

29 Sec. 1806.103. CONSTRUCTION OF SUBCHAPTER. (a) This
30 subchapter does not limit in any manner the kinds or classes of
31 insurance that an insurer may write under an appropriate statute or
32 the insurer's charter or certificate of authority.

33 (b) This subchapter may not be construed to prohibit the
34 modification of rates by a rating plan that complies with Chapter

2251 or Article 5.13-2, as applicable. (V.T.I.C. Art. 5.13, Sec. (d); Art. 5.20, Sec. (b) (part).)

Source Law

[Art. 5.13]

(d) This subchapter shall not be construed as limiting in any manner the types or classes of insurance which may be written by the several types of insurers under appropriate statutes or their charters or permits.

[Art. 5.20]

(b) . . . provided further, that nothing in this subchapter shall be construed to prohibit the modification of rates by any rating plan authorized under this subchapter.

Revisor's Note

(1) Section (d), V.T.I.C. Article 5.13, refers to "[t]his subchapter," meaning Subchapter B, V.T.I.C. Chapter 5. The revised law substitutes a reference to "this subchapter" of the revised law for "[t]his subchapter" for the reason stated in Revisor's Note (1) to Section 1806.102.

(2) Section (b), V.T.I.C. Article 5.20, states that "this subchapter," meaning Subchapter B, V.T.I.C. Chapter 5, may not be construed to prohibit the modification of rates by a "rating plan authorized under this subchapter." The revised law substitutes a reference to "this subchapter" of the revised law for the first reference to "this subchapter" because the only provisions of Subchapter B, Chapter 5, that could be construed to prohibit the modification of rates by a rating plan are revised in this subchapter.

In addition, the revised law substitutes a reference to a "rating plan that complies with Chapter 2251 or Article 5.13-2, as applicable," for the reference to a "rating plan authorized under this subchapter" for accuracy. In 2003, under Chapter 206, Acts of the 78th Legislature, Regular Session, the legislature amended Section 2(a), V.T.I.C. Article

1 5.13-2, revised in this code in Section 2251.003, to
2 expand the application of Article 5.13-2 to the kinds
3 of casualty insurance and fidelity, surety, or
4 guaranty bonds to which this subchapter applies, and
5 that article governs rates for that insurance and
6 those bonds, including the authority to use a rating
7 plan. Therefore, a rating plan authorized under
8 Subchapter B, Chapter 5, means a rating plan
9 authorized under Article 5.13-2. The relevant
10 provisions of that article that are revised are
11 contained in Chapter 2251 of this code. Although that
12 chapter contains other provisions that are derived
13 from V.T.I.C. Article 5.13-2C, the revised law
14 appropriately refers to the chapter in its entirety
15 because the provisions that are derived from Article
16 5.13-2C do not relate to rating plans for casualty
17 insurance and fidelity, guaranty, or surety bonds. In
18 addition, the revised law substitutes "complies with"
19 for "authorized under" to accurately reflect the
20 regulatory system established under Article 5.13-2 as
21 explained in Revisor's Note (2) to Section 1806.052.

22 Revised Law

23 Sec. 1806.104. PROHIBITED ACTS. (a) Except as otherwise
24 provided by this subchapter, an insurer, an insurer's employee, or
25 a broker or agent may not knowingly:

26 (1) issue an insurance policy that is not in
27 accordance with an applicable filing that is filed and in effect
28 under Chapter 2251 or 2301 or Article 5.13-2; or

29 (2) charge, demand, or receive a premium on an
30 insurance policy that is not in accordance with an applicable
31 filing that is filed and in effect under Chapter 2251 or 2301 or
32 Article 5.13-2.

33 (b) Except as provided in an applicable filing that is filed
34 and in effect under Chapter 2251 or 2301 or Article 5.13-2, an

1 insurer, an insurer's employee, or a broker or agent may not
2 directly or indirectly pay, allow, or give, or offer to pay, allow,
3 or give, as an inducement to insurance, or after insurance has been
4 written, a rebate, discount, abatement, credit or reduction of the
5 premium stated in an insurance policy, or a special favor or
6 advantage in the dividends or other benefits to accrue on the
7 policy, or any valuable consideration or inducement, not specified
8 in the policy.

9 (c) An insured named in an insurance policy or an employee
10 of an insured may not knowingly receive or accept, directly or
11 indirectly, a rebate, discount, abatement, credit, or reduction of
12 the premium stated in an insurance policy, or a special favor or
13 advantage or valuable consideration or inducement. (V.T.I.C. Art.
14 5.20, Sec. (a).)

15 Source Law

16 Art. 5.20. (a) Except as provided by this
17 article, no insurer or employee thereof, and no broker
18 or agent shall knowingly issue any policy of insurance
19 nor charge, demand or receive a premium thereon except
20 in accordance with the applicable filing which has
21 been approved by the commissioner. No insurer or
22 employee thereof, and no broker or agent shall pay,
23 allow or give, or offer to pay, allow, or give,
24 directly or indirectly, as an inducement to insurance,
25 or after insurance has been effected, any rebate,
26 discount, abatement, credit or reduction of the
27 premium named in a policy of insurance, or any special
28 favor or advantage in the dividends or other benefits
29 to accrue thereon, or any valuable consideration or
30 inducement whatever, not specified in the policy of
31 insurance, except to the extent provided for in such
32 applicable filing. No insured named in a policy of
33 insurance, nor any employee of such insured shall
34 knowingly receive or accept, directly or indirectly,
35 any such rebate, discount, abatements, or reduction of
36 premium, or any special favor or advantage or valuable
37 consideration or inducement.

38 Revisor's Note

39 (1) Section (a), V.T.I.C. Article 5.20,
40 prohibits issuing an insurance policy or charging,
41 demanding, or receiving a premium on an insurance
42 policy "except in accordance with the applicable
43 filing which has been approved by the commissioner"
44 and prohibits any inducement to insurance "except to

1 the extent provided for in such applicable filing." As
2 explained in Revisor's Note (2) to Section 1806.103,
3 V.T.I.C. Article 5.13-2, the portions of which that
4 are revised are contained in Chapters 2251 and 2301 of
5 this code, governs rates and forms for the kinds of
6 casualty insurance and surety, fidelity, and guaranty
7 bonds to which this subchapter applies. Under the
8 provisions of that article revised in Chapters 2251
9 and 2301, rates and forms are filed with the
10 commissioner of insurance and, under most
11 circumstances, may be used unless disapproved by the
12 commissioner. For accuracy, the revised law
13 substitutes references to a filing "that is filed and
14 in effect under Chapter 2251 or 2301 or Article 5.13-2"
15 for the references to the "filing which has been
16 approved by the commissioner" and "such . . . filing."
17 Although Chapter 2251 contains provisions that are
18 derived from V.T.I.C. Article 5.13-2C, and Chapter
19 2301 contains provisions that are derived from
20 V.T.I.C. Article 5.145, the revised law appropriately
21 refers to those chapters in their entirety because the
22 provisions that are derived from Articles 5.13-2C and
23 5.145 do not relate to casualty insurance or fidelity,
24 surety, or guaranty bonds.

25 (2) Section (a), V.T.I.C. Article 5.20, refers
26 to a "rebate, discount, abatement, credit or
27 reduction" of premiums and subsequently refers to "any
28 such rebate, discount, abatements, or reduction" of
29 premiums. The revised law substitutes the former
30 phrase for the latter phrase for consistency and
31 because it is clear from the context that the two
32 phrases are intended to have the same meaning.

33 Revised Law

34 Sec. 1806.105. PROFIT SHARING AUTHORIZED; CERTAIN

1 PROHIBITIONS. (a) This subchapter does not prohibit an insurer
2 from sharing earned profits with the insurer's policyholders in
3 accordance with a profit sharing agreement contained in the policy,
4 provided that any profit sharing under the policy with those
5 insureds must be uniform among the insureds and may consist only of
6 the equitable distribution of earnings among the insureds in
7 accordance with the terms of the policy.

8 (b) An insurer may not:

9 (1) discriminate in the distribution of profits among
10 insureds of the same class;

11 (2) distribute the profit to an insured before the
12 expiration of the policy; or

13 (3) establish a class of insureds for the distribution
14 of profits, except on the commissioner's approval.

15 (c) A distribution of profits or dividends to an insured may
16 not take effect or be distributed until:

17 (1) adequate reserves are provided, as computed on the
18 same basis for all classes of insurers to which this subchapter
19 applies; and

20 (2) the commissioner approves the distribution.
21 (V.T.I.C. Art. 5.20, Sec. (b) (part).)

22 Source Law

23 (b) Nothing in this article, however, shall be
24 construed to prohibit an insurer from sharing its
25 profits after the same have been earned with its
26 policyholders under and in accordance with an
27 agreement as to such profit sharing contained in its
28 policy contract. Any profit sharing under any policy
29 with insured shall be uniform as between such insured,
30 and shall consist only and solely of the equitable
31 distribution under and in accordance with the terms of
32 the policy of earnings between such insured, and no
33 such insurer shall discriminate in any distribution of
34 profits between insured of a class, and no classes for
35 such distribution shall be made or established except
36 on the approval of the commissioner. No part of any
37 profit shall be distributed to any insured under any
38 such policy until the expiration of the policy
39 contract, provided no distribution of profits or
40 dividends to insured shall take effect or be paid until
41 the same shall have been approved by the commissioner;
42 and provided further, that no such distribution shall
43 be approved until adequate reserves shall have been
44 provided, such reserves to be computed on the same
45 basis for all classes of insurers operating under this

1 subchapter. . . .

2 Revisor's Note

3 (1) Section (b), V.T.I.C. Article 5.20, refers
4 to insurers sharing earned profits with policyholders
5 "under and in accordance with" a profit sharing
6 agreement and the policy. The revised law omits "in
7 accordance with" for the reason stated in Revisor's
8 Note (1) to Section 1806.055.

9 (2) Section (b), V.T.I.C. Article 5.20, refers
10 to profits being "paid." The revised law substitutes
11 "distributed" for "paid" for consistency of
12 terminology throughout this chapter and because the
13 terms are synonymous and the former is more commonly
14 used.

15 Revised Law

16 Sec. 1806.106. PROFIT SHARING WITH CERTAIN ASSOCIATIONS
17 AUTHORIZED. (a) This subchapter does not prohibit an insurer, on
18 approval by the commissioner, from sharing profits with
19 policyholders who are part of a group program established by a
20 nonprofit business association and who participate in the group
21 program because of membership in the association.

22 (b) An insurer that elects to make distributions under this
23 section must:

24 (1) file a written description of the insurer's
25 distribution program with the commissioner for approval; and

26 (2) notify the commissioner in writing of each
27 distribution made under the program.

28 (c) If the commissioner does not act on the insurer's
29 distribution program on or before the fifth business day after the
30 date the commissioner receives the insurer's description of the
31 program, the distribution program is considered approved.
32 (V.T.I.C. Art. 5.20, Sec. (c) (part).)

33 Source Law

34 (c) This article does not prohibit an insurer,
35 on approval by the commissioner, from sharing profits

1 with policyholders who are part of a group program
2 established by a nonprofit business association and
3 who participate in the group program because of
4 membership in the association. An insurer that elects
5 to make distributions under this subsection shall file
6 a written description of its distribution program with
7 the commissioner for approval by the commissioner and
8 shall notify the commissioner in writing of each
9 distribution made under the program. If the
10 commissioner does not act on the insurer's
11 distribution program within five business days of
12 receipt of the insurer's distribution program, the
13 distribution program is considered approved. . . .

14 Revised Law

15 Sec. 1806.107. ENFORCEMENT. (a) A violation of this
16 subchapter is unjust discrimination and rebating.

17 (b) The commissioner may revoke the certificate of
18 authority of an insurer that violates this subchapter or the
19 license of an agent who violates this subchapter. (V.T.I.C. Art.
20 5.20, Sec. (b) (part).)

21 Source Law

22 (b) . . . Any violation of the terms of this
23 article shall constitute unjust discrimination and
24 shall constitute rebating, and shall be sufficient
25 grounds for the revocation of the permit of the insurer
26 or of the license of the agent being guilty of such
27 unjust discrimination and rebating;

28 Revisor's Note
29 (End of Subchapter)

30 Section (e), V.T.I.C. Article 5.13, states that
31 the regulatory power conferred in this subchapter is
32 vested in the commissioner of insurance. The revised
33 law omits this statement as unnecessary. Section
34 31.021 of this code provides that the commissioner "is
35 the department's chief executive and administrative
36 officer" and "has the powers and duties vested in the
37 department by this code." The omitted law reads:

38 (e) The regulatory power herein
39 conferred is vested in the commissioner.

40 [Sections 1806.108-1806.150 reserved for expansion]

41 SUBCHAPTER D. PROVISIONS APPLICABLE TO FIRE INSURANCE
42 AND ALLIED LINES

43 Revised Law

44 Sec. 1806.151. APPLICABILITY OF SUBCHAPTER. (a) Each

1 insurance policy or contract insuring property in this state
2 against loss by fire, including a policy or contract or portion of a
3 policy or contract that insures the shore end of a marine risk
4 against loss by fire, must be issued in accordance with:

- 5 (1) this subchapter;
- 6 (2) Section 403.002;
- 7 (3) Subchapter C, Chapter 5;
- 8 (4) Subchapter H, Chapter 544; and
- 9 (5) Chapters 252, 2001, 2002, 2003, 2004, 2005, 2006,
10 and 2171.

11 (b) An insurer issuing an insurance policy or contract
12 described by Subsection (a), including a fire insurance company,
13 marine insurance company, fire and marine insurance company, and
14 fire and tornado insurance company, is governed by the laws
15 described by Subsection (a).

16 (c) This section applies to an insurer or to an insurance
17 policy or contract regardless of:

- 18 (1) the kind and character of property insured;
- 19 (2) whether the property is:
 - 20 (A) fixed or movable;
 - 21 (B) stationary or in transit; or
 - 22 (C) consigned or billed for shipment inside or
23 outside the boundaries of this state or to a foreign country;
- 24 (3) whether the insurer is organized:
 - 25 (A) under the laws of this state, another state,
26 territory, or possession of the United States, or a foreign
27 country; or
 - 28 (B) by authority of the federal government; or
- 29 (4) the kind of insurer or the name of the insurer
30 issuing the policy or contract. (V.T.I.C. Art. 5.27 (part).)

31 Source Law

32 Art. 5.27. Every fire insurance company, every
33 marine insurance company, every fire and marine
34 insurance company, every fire and tornado insurance
35 company, and each and every insurance company of every
36 kind and name issuing a contract or policy of

1 insurance, or contracts or policies of insurance
2 against loss by fire on property within this State,
3 whether such property be fixed or movable, stationary
4 or in transit, or whether such property is consigned or
5 billed for shipment within or beyond the boundary of
6 this State or to some foreign county, whether such
7 company is organized under the laws of this State or
8 under the laws of any other state, territory or
9 possession of the United States, or foreign country,
10 or by authority of the Federal Government, [now
11 holding certificate of authority to transact business
12 in this State, shall be deemed to have accepted such
13 certificate and to transact business thereunder, upon
14 condition that it consents to the terms and provisions
15 of this subchapter and that it agrees to transact
16 business in this State, subject thereto;] it being
17 intended that every contract or policy of insurance
18 against the hazard of fire shall be issued in
19 accordance with the terms and provisions of this
20 subchapter, and the company issuing the same governed
21 thereby, regardless of the kind and character of such
22 property and whether the same is fixed or movable,
23 stationary or in transit, including the shore end of
24 all marine risks insured against loss by fire.

25 Revisor's Note

26 (1) V.T.I.C. Article 5.27 refers to a foreign
27 "county." It is clear from the context that "county"
28 is a typographical error and that the legislature
29 intended to refer to a foreign "country." The revised
30 law is drafted accordingly.

31 (2) V.T.I.C. Article 5.27 requires a fire
32 insurance policy and an insurer that issues a fire
33 insurance policy to comply with "this subchapter,"
34 meaning Subchapter C, V.T.I.C. Chapter 5. Included in
35 Subchapter C, Chapter 5, were V.T.I.C. Articles
36 5.43-4, 5.44, 5.49, 5.53, and 5.54. Article 5.43-4 was
37 revised in 1999 as Chapter 2154, Occupations Code,
38 Article 5.44 was revised in 1987 as Section 417.008,
39 Government Code, and Article 5.49 was revised,
40 effective April 1, 2005, in part in Chapter 251 of this
41 code. In addition, Articles 5.53 and 5.54 are revised
42 in part as Chapter 1807 of this code. The revised law
43 does not reference the statutes revising those
44 articles because those provisions do not regulate fire
45 insurance policies or insurers with respect to issuing
46 those policies.

1 Revised Law

2 Sec. 1806.152. CONSTRUCTION OF SUBCHAPTER. (a) This
3 subchapter, Subtitle D, and Subchapter C, Chapter 5, may not be
4 construed to deal with the collection of premiums, but each insurer
5 may make rules and regulations the insurer considers just between
6 the insurer and the insurer's agents and policyholders.

7 (b) A bona fide extension of credit may not be construed as
8 discrimination or as a violation of this subchapter. (V.T.I.C.
9 Art. 5.42 (part).)

10 Source Law

11 Art. 5.42. The provisions of this subchapter
12 shall not deal with the collection of premiums, but
13 each company shall be permitted to make such rules and
14 regulations as it may deem just between the company,
15 its agents, and its policyholders; and no bona fide
16 extension of credit shall be construed as a
17 discrimination, or in violation of the provisions of
18 this subchapter. . . .

19 Revisor's Note

20 V.T.I.C. Article 5.42 states that a bona fide
21 extension of credit may not be construed as
22 discrimination or as a violation of "this subchapter,"
23 meaning Subchapter C, V.T.I.C. Chapter 5. Subchapter
24 C, Chapter 5, is revised in various chapters in this
25 code. The only provisions of Subchapter C that could
26 be interpreted to prohibit a bona fide extension of
27 credit are revised in this subchapter. The revised law
28 is drafted accordingly.

29 Revised Law

30 Sec. 1806.153. UNJUST DISCRIMINATION; REBATES. (a) An
31 insurer or an insurer's officer, director, agent, or other
32 representative may not grant or contract for a special favor or
33 advantage in:

34 (1) dividends or other profits to accrue on an
35 insurance policy;

36 (2) commissions in the dividends or other profits to
37 accrue on an insurance policy;

(3) commissions or division of commission; or

(4) a position, valuable consideration, or inducement not specified in an insurance policy.

(b) An insurer may not directly or indirectly give, sell, or purchase or offer to give, sell, or purchase as an inducement to insurance or in connection with insurance:

(1) stocks, bonds, or other securities of an insurer or other corporation, partnership, or individual;

(2) dividends or profits that have accrued or will accrue on stocks, bonds, or other securities of an insurer or other corporation, partnership, or individual; or

(3) anything of value not specified in the policy.

(c) An insurer or an insurer's officer, director, agent, or other representative that violates this section has engaged in unjust discrimination. (V.T.I.C. Art. 5.41, Sec. (a) (part).)

Source Law

(a) . . . [nor shall any such company knowingly write insurance . . .] it shall be unlawful for any company, or its officers, directors, general agents, state agents, special agents, local agents, or its representatives, to grant or contract for any special favor or advantages in the dividends or other profits to come thereon, or in commissions in the dividends or other profits to accrue thereon, or in commissions or division of commission, or any position or any valuable consideration or any inducement not specified in the policy contract of insurance; nor shall such company give, sell or purchase, offer to give, sell or purchase, directly or indirectly, as an inducement to insure or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, partnership or individual, or any dividends or profits accrued or to accrue thereon, or anything of value whatsoever, not specified in the policy. . . . Any company, or any of its officers, directors, general agents, state agents, special agents, local agents or its representatives, doing any of the acts in this article prohibited, shall be deemed guilty of unjust discrimination. . . .

Revisor's Note

Section (a), V.T.I.C. Article 5.41, refers to the "general agents, state agents, special agents, [and] local agents" of an insurer. The revised law omits the references to those agents for the reason stated in Revisor's Note (1) to Section 1806.054.

1 Revised Law

2 Sec. 1806.154. PROFIT SHARING AUTHORIZED. (a) Section
3 1806.153 does not prohibit an insurer from sharing profits with the
4 insurer's policyholders if:

5 (1) a profit sharing agreement is placed on or in the
6 face of the policy;

7 (2) the profit sharing is uniform and does not
8 discriminate among individuals or among classes; and

9 (3) the profit is not distributed to an insured before
10 the expiration of the insurance policy.

11 (b) An insurer or an insurer's officer, director, agent, or
12 other representative that violates this section has engaged in
13 unjust discrimination. (V.T.I.C. Art. 5.41, Sec. (a) (part).)

14 Source Law

15 (a) . . . Nothing in this law shall be
16 construed to prohibit a company from sharing its
17 profits with its policyholders, if such agreement as
18 to profit sharing shall be placed on or in the face of
19 the policy, and such profit sharing shall be uniform
20 and shall not discriminate between individuals or
21 between classes. No part of the profit shall be paid
22 until the expiration of the policy. . . .

23 Revisor's Note

24 (1) Section (a), V.T.I.C. Article 5.41, states
25 that "this law" may not be construed to prohibit an
26 insurer from sharing profits with policyholders if
27 certain requirements are satisfied. The only
28 provision of this code that could be interpreted to
29 prohibit an insurer from sharing profits with
30 policyholders in this context is revised in this
31 subchapter as Section 1806.153. The revised law is
32 drafted accordingly.

33 (2) Section (a), V.T.I.C. Article 5.41, refers
34 to profits being "paid." The revised law substitutes
35 "distributed" for "paid" for the reason stated in
36 Revisor's Note (2) to Section 1806.105.

1 Revised Law

2 Sec. 1806.155. INSURER LIABILITY ON POLICY ISSUED WITHOUT
3 AUTHORITY. (a) If an insurer or an insurer's agent issues an
4 insurance policy without authority and the policyholder sustains a
5 loss or damage covered under the policy, the insurer is liable to
6 the policyholder under the policy in the same manner and to the same
7 extent as if the insurer had been authorized to issue the policy,
8 although the policy was issued in violation of this code.

9 (b) This section may not be construed to give an insurer the
10 authority to issue an insurance policy or contract other than as
11 provided by this code. (V.T.I.C. Art. 5.41, Sec. (a) (part).)

12 Source Law

13 (a) . . . If any agent or company shall issue a
14 policy without authority, and any policyholder holding
15 such policy shall sustain a loss or damage thereunder,
16 said company or companies shall be liable to the
17 policyholder thereunder, in the same manner and to the
18 same extent as if said company had been authorized to
19 issue said policies, although the company issued said
20 policy in violation of the provisions of this
21 subchapter. But this shall not be construed to give
22 any company the right to issue any contract or policy
23 of insurance other than as provided in this
24 subchapter.

25 Revisor's Note

26 Section (a), V.T.I.C. Article 5.41, states that
27 the provision, which provides consequences if an
28 insurer or agent issues an insurance policy "without
29 authority," may not be construed to give an insurer the
30 authority to issue an insurance policy other than as
31 provided in "this subchapter," meaning Subchapter C,
32 V.T.I.C. Chapter 5. V.T.I.C. Article 5.41 was derived
33 from Section 22, Chapter 106, Acts of the 33rd
34 Legislature, Regular Session, 1913. As originally
35 enacted, the provision referred to the issuance of a
36 policy other than as provided in "this Act," meaning
37 Chapter 106, which, at the time, was the entirety of
38 insurance laws for this state. In that context, the
39 reference intended to prevent Section 22 from being

1 construed to allow an insurer to issue a policy without
2 authority under the insurance laws. The reference was
3 changed from "this Act" to "this subchapter" in the
4 codification of Section 22 as V.T.I.C. Article 5.41 by
5 Chapter 491, Acts of the 52nd Legislature, Regular
6 Session, 1951. That Act was a nonsubstantive revision
7 of the insurance laws of this state. The revised law
8 substitutes "this code" for "this subchapter" to
9 preserve the intent of the original enactment by
10 referring to the entirety of the insurance laws for
11 this state.

12 Revised Law

13 Sec. 1806.156. ACCEPTANCE OF REBATE OR OTHER INDUCEMENT;
14 CRIMINAL PENALTY. (a) A person commits an offense if the person
15 knowingly receives or accepts from an insurer, an insurer's agent,
16 broker, or other representative, or any other person a rebate of
17 premium payable on an insurance policy, or a special favor or
18 advantage in dividends or other financial profits accrued or to
19 accrue on the policy, or any valuable consideration, position or
20 inducement not specified in the policy.

21 (b) An offense under this section is punishable by:

22 (1) a fine of not more than \$100;

23 (2) confinement in jail for not more than 90 days; or

24 (3) both a fine and confinement under this subsection.

25 (V.T.I.C. Art. 5.41-1.)

26 Source Law

27 Art. 5.41-1. Whoever shall knowingly receive or
28 accept from any insurance company or from any of its
29 agents, sub-agents, brokers, solicitors, employes,
30 intermediaries or representatives, or any other
31 person, any rebate of premium payable on policy, or any
32 special favor or advantage in the dividends or other
33 financial profits accrued or to accrue thereon, or any
34 valuable consideration, position or inducement not
35 specified in the policy of insurance, shall be fined
36 not exceeding one hundred dollars or be imprisoned in
37 jail not exceeding ninety days, or both.

38 Revisor's Note

39 (1) V.T.I.C. Article 5.41-1 refers to the

"agents, sub-agents, brokers, solicitors, employés, intermediaries or representatives" of an insurer. The revised law omits the reference to "sub-agents," because the meaning of that term is included within the meaning of "agent" and omits the references to "solicitors," "employés," and "intermediaries" because, in context, the meaning of those terms is included within the meaning of "representative."

(2) V.T.I.C. Article 5.41-1 refers to a punishment of being "imprisoned" in jail. The revised law refers to "confinement" in jail rather than imprisonment to conform to the terminology of the Penal Code.

Revisor's Note
(End of Subchapter)

A portion of Section (a), V.T.I.C. Article 5.41, requires a company insuring property against loss or damage by fire to comply with the requirements of state law regulating that type of insurer. Each provision of this chapter, by its own terms, requires compliance by an insurer. V.T.I.C. Article 5.27, revised in relevant part in this chapter, specifies to which companies this chapter applies. Therefore, the revised law omits the portion of Article 5.41 as unnecessary. The omitted law reads:

Art. 5.41. (a) [No company shall engage or participate in the insuring or reinsuring of any property in this State against loss or damage by fire] except in compliance with the terms and provisions of this law;

CHAPTER 1807. APPLICABILITY TO MARINE INSURANCE

Sec. 1807.001. DEFINITIONS 845

Sec. 1807.002. INAPPLICABILITY OF CERTAIN LAWS TO
MARINE INSURANCE; EXCEPTION 846

1 CHAPTER 1807. APPLICABILITY TO MARINE INSURANCE

2 Revised Law

3 Sec. 1807.001. DEFINITIONS. In this chapter:

4 (1) "Insurable property and interests" includes:

5 (A) goods, freights, and cargoes;

6 (B) merchandise;

7 (C) effects;

8 (D) disbursements;

9 (E) profits;

10 (F) money, bullion, and precious stones;

11 (G) securities;

12 (H) choses in action;

13 (I) evidences of debt;

14 (J) valuable papers; and

15 (K) bottomry and respondentia interests.

16 (2) "Marine insurance" means:

17 (A) insurance and reinsurance that covers:

18 (i) loss or damage to:

19 (a) a hull, vessel, or craft of any
20 kind, an aid to navigation, a dry dock, or a marine railway, whether
21 complete, under construction, or awaiting construction; or

22 (b) insurable property and interests
23 in respect to, appertaining to, or in connection with a risk or
24 peril of navigation, transit, or transportation:

25 (1) on or under a sea, lake, or
26 river or other water, in the air, or on land in connection with or
27 incident to export, import, or waterborne risks;

28 (2) while being assembled,
29 packed, crated, baled, compressed, or similarly prepared for
30 shipment;

31 (3) while awaiting shipment; or

32 (4) during any delay, storage,
33 or transshipment or reshipment incident to the initial shipment;

34 (ii) a marine builder or repairer risk;

1 (iii) a marine protection or indemnity
2 risk; or

3 (iv) a war risk regarding any insurable
4 property or interest described by this section; and

5 (B) insurance defined as marine insurance by
6 another statute, lawful custom, or rule adopted by the
7 commissioner. (V.T.I.C. Art. 5.53 (part).)

8 Source Law

9 Art. 5.53. The provisions of this article shall
10 apply to all insurance which is now or hereafter
11 defined by statute, by rules of the commissioner, or by
12 lawful custom, as marine insurance. . . .

13 The term "Marine Insurance" shall mean and
14 include insurance and reinsurance against any and all
15 kinds of loss or damage to the following subject
16 matters of insurance interest therein:

17 Marine Insurance. Hulls, vessels and craft of
18 every kind, aids to navigation, dry docks and marine
19 railways, including marine builders' and repairers'
20 risks, and whether complete or in process of or
21 awaiting construction; also all marine protection and
22 indemnity risks; also all goods, freights, cargoes,
23 merchandise, effects, disbursements, profits, moneys,
24 bullion, precious stones, securities, choses in
25 action, evidences of debt, valuable papers, bottomry
26 and respondentia interests, and all other kinds of
27 property and interests therein, in respect to,
28 appertaining to or in connection with any and all risks
29 or perils of navigation, transit or transportation on
30 or under any seas, lakes, rivers, or other waters or in
31 the air, or on land in connection with or incident to
32 export, import or waterborne risks, or while being
33 assembled, packed, crated, baled, compressed or
34 similarly prepared for such shipment or while awaiting
35 the same, or during any delays, storage, transshipment
36 or reshipment incident thereto, including the
37 insurance of war risks in respect to any or all of the
38 aforesaid subject matters of insurance.

39 . . .

40 Revised Law

41 Sec. 1807.002. INAPPLICABILITY OF CERTAIN LAWS TO MARINE
42 INSURANCE; EXCEPTION. (a) The following provisions do not apply to
43 marine insurance:

44 (1) Sections 36.002, 37.051, 403.002, 492.051, and
45 501.159;

46 (2) Subchapter H, Chapter 544;

47 (3) Chapters 5, 252, 253, 493, 494, 1804, 1805, 1806,
48 and 2171; and

49 (4) Subtitles B, C, D, E, F, H, and I.

(b) Subsection (a) does not apply to:

(1) a farm mutual insurance company operating under Chapter 911;

(2) a mutual insurance company engaged in business under Chapter 12, Title 78, Revised Statutes, before that chapter's repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st Called Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that retains the rights and privileges under the repealed law to the extent provided by those sections; or

(3) a county mutual insurance company operating under Chapter 912. (V.T.I.C. Arts. 5.53 (part), 5.54 (part).)

Source Law

Art. 5.53. . . .

The provisions of Chapter 5 of this code, other than this article, shall not apply to marine insurance as defined by this article.

Art. 5.54. Nothing in Articles . . . 5.53 of this subchapter shall ever be construed to apply to any farm mutual insurance company operating under Chapter 16 of this Code or to any company now operating under Chapter 12, of Title 78, which has heretofore been repealed. Nothing in Articles . . . 5.53 of this subchapter shall ever be construed to apply to any county mutual insurance company operating under Chapter 17 of this Code.

Revisor's Note

(1) V.T.I.C. Article 5.53 states in part that the provisions of V.T.I.C. Chapter 5 do not apply to marine insurance. Many provisions of Chapter 5, now revised in various parts of this code, could not be interpreted to apply to marine insurance by their own terms; others are simply inapplicable, as a practical matter, to marine insurance. The revised law, however, continues the references to all of the provisions previously contained in Chapter 5 unless the references are clearly inapplicable to marine insurance.

V.T.I.C. Articles 5.12, 5.24, 5.49, 5.68, and 5.91 were included in Chapter 5 and were revised,

1 effective April 1, 2005, in Chapters 251, 252, 253,
2 254, 255, and 256. The revised law does not reference
3 Chapter 251 because it contains only general
4 provisions that have no effect except in relation to
5 the other listed laws. The revised law does not
6 reference Chapter 254, 255, or 256 because those laws
7 apply by their own terms to motor vehicle insurance,
8 workers' compensation insurance, and aircraft
9 insurance, respectively, and could not be interpreted
10 to apply to marine insurance.

11 Chapter 5 included V.T.I.C. Article 5.43-4, which
12 was revised in 1999 as Chapter 2154, Occupations Code,
13 and V.T.I.C. Article 5.44, which was revised in 1987 as
14 Section 417.008, Government Code. Chapter 5 also
15 includes V.T.I.C. Article 5.57A, revised as Chapter
16 406A, Labor Code. The revised law does not reference
17 Section 417.008, Government Code, Chapter 2154,
18 Occupations Code, or Chapter 406A, Labor Code, because
19 those provisions could not be construed to apply to
20 marine insurance.

21 V.T.I.C. Article 5.61, contained in Chapter 5, is
22 revised as Chapter 426. The revised law does not
23 reference Chapter 426 because that law applies to
24 reserves for workers' compensation insurance companies
25 and could not be interpreted to apply to marine
26 insurance.

27 V.T.I.C. Article 5.54, contained in Chapter 5,
28 provides that certain laws, including Subsection (a)
29 of the revised law, do not apply to certain companies.
30 Article 5.54 is revised in part in this section as
31 Subsection (b). The revised law does not reference
32 Subsection (b) because the reference would be
33 nonsensical.

34 V.T.I.C. Article 5.75-1, contained in Chapter 5,

is revised as part of Section 492.051. The revised law refers to that section in its entirety because the other provisions of Section 492.051 apply to life insurance companies and do not apply to marine insurance.

(2) V.T.I.C. Article 5.54 refers to a farm mutual insurance company operating under "Chapter 16 of this Code" and a county mutual insurance company operating under "Chapter 17 of this Code." Chapters 16 and 17 were codified in 2001 as Chapters 911 and 912, respectively. The revised law is drafted accordingly.

[Chapters 1808-1900 reserved for expansion]

SUBTITLE B. LIABILITY INSURANCE FOR PHYSICIANS AND
HEALTH CARE PROVIDERS

CHAPTER 1901. PROFESSIONAL LIABILITY INSURANCE FOR
PHYSICIANS AND HEALTH CARE PROVIDERS

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19 CHAPTER 1901. PROFESSIONAL LIABILITY INSURANCE FOR

20 PHYSICIANS AND HEALTH CARE PROVIDERS

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Revised Law

23 Sec. 1901.001. DEFINITIONS. In this chapter:

24 (1) "Health care provider" means:

25 (A) a person, partnership, professional

26 association, corporation, facility, or institution, or an officer,

27 employee, or agent of the person or entity acting in the course and

28 scope of authority, employment, or agency, as applicable, if the

29 person or entity is licensed or chartered by this state to provide

30 health care as:

31 (i) a registered nurse;

32 (ii) a hospital;

33 (iii) a dentist;

34 (iv) a podiatrist;

(v) a chiropractor;

(vi) an optometrist or therapeutic optometrist;

(vii) a pharmacist;

(viii) a veterinarian;

(ix) a not-for-profit kidney dialysis center;

(x) a blood bank that is a nonprofit corporation chartered to operate a blood bank and is accredited by the American Association of Blood Banks;

(xi) a for-profit or not-for-profit nursing home; or

(xii) a for-profit or not-for-profit assisted living facility; or

(B) a health care practitioner or facility that the commissioner, in accordance with Section 2203.103(b), determines is eligible for coverage under this chapter.

(2) "Hospital" means a public or private institution licensed under Chapter 241 or 577, Health and Safety Code.

(3) "Physician" means a person licensed to practice medicine in this state. (V.T.I.C. Art. 5.15-1, Sec. 2.)

Source Law

Sec. 2. In this article:

(1) "Physician" means a person licensed to practice medicine in this state.

(2) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed or chartered by the State of Texas to provide health care as a registered nurse, hospital, dentist, podiatrist, chiropractor, optometrist, pharmacist, veterinarian, not-for-profit kidney dialysis center, blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks, for-profit nursing home or not-for-profit nursing home, for-profit assisted living facility or not-for-profit assisted living facility, or an officer, employee, or agent of any of them acting in the course and scope of his employment, or a health care practitioner or facility that the commissioner, in accordance with Section 3B(b), Article 21.49-3, of this code, determines is eligible for coverage under this article.

(3) "Hospital" means a licensed public or private institution as defined in Chapter 241, Health

1 and Safety Code, or in Section 88, Chapter 243, Acts of
2 the 55th Legislature, Regular Session, 1957 (Article
3 5547-88, Vernon's Texas Civil Statutes).

4 Revisor's Note

5 (1) Section 2, V.T.I.C. Article 5.15-1,
6 provides definitions applicable to "this article,"
7 meaning V.T.I.C. Article 5.15-1, which is revised in
8 this chapter. Although other provisions of this
9 chapter are derived from V.T.I.C. Article 5.15-4, the
10 revised law substitutes "this chapter" for "this
11 article" in this context because the terms defined in
12 Section 2 are not used in Article 5.15-4.

13 In addition, subsequent provisions of Article
14 5.15-1, including Section 2(2), revised in this
15 section, refer to "this article." Article 5.15-1
16 applies to professional liability insurance for
17 physicians and health care providers, including the
18 setting of rates for that kind of insurance. Section
19 2(2) defines "health care provider" to include a
20 nursing home. Article 5.15-4, revised in this chapter
21 as Subchapter D, in part governs the consideration of
22 best practices for nursing homes in setting rates for
23 professional liability insurance for nursing homes.
24 Because both Articles 5.15-1 and 5.15-4 apply to the
25 setting of rates for professional liability insurance
26 for nursing homes and the articles must, therefore, be
27 read in conjunction with respect to that kind of
28 insurance, it is appropriate throughout this chapter
29 to substitute references to "this chapter" for
30 references to "this article" in Article 5.15-1. The
31 revised law is drafted accordingly.

32 (2) Section 2(2), V.T.I.C. Article 5.15-1,
33 defines "health care provider" to include an
34 "optometrist." The revised law adds "therapeutic
35 optometrist" for consistency with the terminology used

1 in Chapter 351, Occupations Code, which governs the
2 practice of optometry, and because Section 351.003,
3 Occupations Code, provides that a reference in a law of
4 this state to an optometrist means an optometrist or
5 therapeutic optometrist, unless the context clearly
6 indicates otherwise.

7 (3) Section 2(3), V.T.I.C. Article 5.15-1,
8 refers to Section 88, Chapter 243, Acts of the 55th
9 Legislature, Regular Session, 1957 (Article 5547-88,
10 Vernon's Texas Civil Statutes). Article 5547-88 was
11 codified in 1991 in Chapter 577, Health and Safety
12 Code, which governs the licensing of certain mental
13 health facilities. The revised law is drafted
14 accordingly.

15 Revised Law

16 Sec. 1901.002. APPLICABILITY OF CHAPTER. This chapter
17 applies to:

18 (1) an insurer authorized to write or engaged in
19 writing professional liability insurance for a physician or health
20 care provider; and

21 (2) a rating organization acting on behalf of an
22 insurer described by Subdivision (1). (V.T.I.C. Art. 5.15-1, Sec.
23 1.)

24 Source Law

25 Art. 5.15-1

26 Sec. 1. This article shall apply to the making
27 and use of insurance rates by every insurer licensed to
28 write or engaged in writing professional liability
29 insurance for any physician or any health care
30 provider including rating organizations, acting on
31 behalf of insurers.

32 Revisor's Note

33 (1) Section 1, V.T.I.C. Article 5.15-1, states
34 that V.T.I.C. Article 5.15-1, which is revised in this
35 chapter, applies to "the making and use of insurance
36 rates" by an insurer authorized to write professional
37 liability insurance for physicians or health care

1 providers. The revised law omits the quoted language
2 because the article applies by its own terms to the
3 making and use of insurance rates by an insurer to whom
4 this chapter applies, and an additional statement to
5 that effect is unnecessary. In addition, the revised
6 law omits the quoted language as misleading because
7 the article applies to the making and use of insurance
8 forms as well as insurance rates. See, for example,
9 Section 4(c), V.T.I.C. Article 5.15-1, revised in this
10 chapter as Section 1901.201.

11 (2) Section 1, V.T.I.C. Article 5.15-1, refers
12 to an insurer "licensed to write" professional
13 liability insurance for physicians or health care
14 providers. The revised law substitutes "authorized"
15 for "licensed" because "certificate of authority" is
16 the term used throughout this code in relation to an
17 entity's authority to engage in business.

18 Revised Law

19 Sec. 1901.003. APPLICABILITY OF OTHER LAW. Chapters 2251
20 and 2301 and Article 5.13-2 apply to rates and forms for
21 professional liability insurance for physicians and health care
22 providers under this chapter. (V.T.I.C. Art. 5.15-1, Sec. 4(a).)

23 Source Law

24 Sec. 4. (a) The provisions of Article 5.13-2
25 of this code shall apply to the filing of rates and
26 rating information required under this article.

27 Revisor's Note

28 Section 4(a), V.T.I.C. Article 5.15-1, states
29 that V.T.I.C. Article 5.13-2, revised in part in
30 Chapters 2251 and 2301 of this code, applies to the
31 filing of rates and rating information required under
32 V.T.I.C. Article 5.15-1, which is revised in this
33 chapter. Article 5.13-2 applies by its own terms to
34 both insurance rates and insurance forms for certain
35 specified kinds of insurance, including the kinds of

1 insurance regulated under this chapter. The revised
2 law is drafted to accurately reflect that
3 applicability.

4 In addition, although Chapter 2251 is also
5 derived in part from V.T.I.C. Article 5.13-2C and
6 Chapter 2301 is also derived in part from V.T.I.C.
7 Article 5.145, the revised law appropriately refers to
8 both chapters in their entirety because Article
9 5.13-2C relates only to certain insurers writing
10 residential property insurance and Article 5.145
11 relates only to personal automobile and residential
12 property insurance; therefore, the provisions of
13 Chapters 2251 and 2301 derived from Articles 5.13-2C
14 and 5.145 are inapplicable by their own terms to rates
15 and forms for the kinds of insurance regulated under
16 this chapter.

17 Revised Law

18 Sec. 1901.004. ANNUAL REPORTS. (a) An insurer that
19 issues professional liability insurance policies covering
20 physicians and health care providers shall file annually with the
21 commissioner a report of:

- 22 (1) all claims and the amounts of those claims;
23 (2) amounts of claims reserves;
24 (3) investment income of the insurer derived from
25 medical professional liability premiums;
26 (4) information relating to amounts of judgments and
27 settlements paid on claims; and
28 (5) other information required by the commissioner.

29 (b) The commissioner may promulgate a form on which the
30 information under Subsection (a) must be reported. The form must
31 require that the information be reported in an accurate manner and
32 be reasonably calculated to:

- 33 (1) facilitate interpretation; and
34 (2) protect the confidentiality of the physician or

1 health care provider. (V.T.I.C. Art. 5.15-1, Sec. 5.)

2 Source Law

3 Sec. 5. Each insurer who issues policies of
4 professional liability insurance covering physicians
5 and health care providers shall file annually with the
6 State Board of Insurance a report of all claims and
7 amount of claims, amounts of claims reserves,
8 investment income of the company derived from medical
9 professional liability premiums, information relating
10 to amounts of judgments and settlements paid on
11 claims, and other information required by the board.
12 The board may formulate and promulgate a form on which
13 this information shall be reported. The form shall be
14 so devised as to require the information to be reported
15 in an accurate manner, reasonably calculated to
16 facilitate interpretation and to protect the
17 confidentiality of the health care provider or
18 physician.

19 Revisor's Note

20 (1) Section 5, V.T.I.C. Article 5.15-1, refers
21 to the State Board of Insurance. Chapter 685, Acts of
22 the 73rd Legislature, Regular Session, 1993, abolished
23 the board and transferred its functions to the
24 commissioner of insurance and the Texas Department of
25 Insurance. Throughout this chapter, references to the
26 board have been changed appropriately.

27 (2) Section 5, V.T.I.C. Article 5.15-1,
28 authorizes the State Board of Insurance, meaning the
29 commissioner of insurance for the reason stated in
30 Revisor's Note (1) to this section, to "formulate and
31 promulgate" a form. The revised law omits "formulate"
32 because "formulate" is included within the meaning of
33 "promulgate."

34 Revised Law

35 Sec. 1901.005. RULES. The commissioner shall establish by
36 rule:

37 (1) criteria that insurers must follow in establishing
38 reconsideration procedures under Section 1901.101; and

39 (2) standards and procedures to be followed in the
40 review of rates and premiums by the commissioner. (V.T.I.C.
41 Art. 5.15-1, Sec. 4B(c).)

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[Sections 1901.006-1901.050 reserved for expansion]

SUBCHAPTER B. RATE STANDARDS

Sec. 1901.051. CONSIDERATIONS IN SETTING RATES. (a) In setting rates, an insurer shall consider:

(2) a reasonable margin for underwriting profit and contingencies;

(4) dividends or savings allowed or returned by the insurer to the insurer's policyholders or members.

(V.T.I.C. Art. 5.15-1, Sec. 3 (part).)

Sec. 3. Rates shall be made in accordance with the following provisions:

• • •

1 Revised Law

2 Sec. 1901.052. GROUPING OF RISKS. In setting rates, an
3 insurer may group risks by classification, rating schedule, or any
4 other reasonable method. (V.T.I.C. Art. 5.15-1, Sec. 3 (part).)

5 Source Law

6 Sec. 3. Rates shall be made in accordance with
7 the following provisions:

8 . . .
9 (c) For the establishment of rates, risks
10 may be grouped by classifications, by rating
11 schedules, or by any other reasonable methods. . . .

12 Revised Law

13 Sec. 1901.053. MODIFICATION OF CLASSIFICATION RATES. (a)
14 An insurer may modify classification rates to produce rates for
15 individual risks in accordance with rating plans that establish
16 standards for measuring variations in hazards or expense
17 provisions.

18 (b) The standards may measure any difference among risks
19 that can be demonstrated to have a probable effect on losses or
20 expenses. (V.T.I.C. Art. 5.15-1, Sec. 3 (part).)

21 Source Law

22 Sec. 3. Rates shall be made in accordance with
23 the following provisions:

24 . . .
25 (c) . . . Classification rates may be
26 modified to produce rates for individual risks in
27 accordance with rating plans which establish standards
28 for measuring variations in hazards or expense
29 provisions, or both. Those standards may measure any
30 difference among risks that can be demonstrated to
31 have a probable effect upon losses or expenses.
32 . . .

33 Revised Law

34 Sec. 1901.054. LIMITATIONS ON RATES. (a) Rates set under
35 this chapter may not be excessive or inadequate, as described by
36 this section, or unreasonable or unfairly discriminatory.

37 (b) A rate is not excessive unless:

38 (1) the rate is unreasonably high for the insurance
39 coverage provided; and

40 (2) a reasonable degree of competition does not exist
41 in the area with respect to the classification to which the rate

1 applies.

2 (c) A rate is not inadequate unless the rate is unreasonably
3 low for the insurance coverage provided and:

4 (1) is insufficient to sustain projected losses and
5 expenses; or

6 (2) the use of the rate has or, if continued, will have
7 the effect of destroying competition or creating a monopoly.

8 (V.T.I.C. Art. 5.15-1, Sec. 3 (part).)

9 Source Law

10 Sec. 3. Rates shall be made in accordance with
11 the following provisions:

12 (d) Rates shall be reasonable and shall
13 not be excessive or inadequate, as defined in this
14 subsection, nor shall they be unfairly discriminatory.
15 No rate shall be held to be excessive unless the rate
16 is unreasonably high for the insurance coverage
17 provided and a reasonable degree of competition does
18 not exist in the area with respect to the
19 classification to which the rate is applicable. No
20 rate shall be held to be inadequate unless the rate is
21 unreasonably low for the insurance coverage provided
22 and is insufficient to sustain projected losses and
23 expenses; or unless the rate is unreasonably low for
24 the insurance coverage provided and the use of the rate
25 has or, if continued, will have the effect of
26 destroying competition or creating a monopoly.
27

28 Revised Law

29 Sec. 1901.055. CLAIM SURCHARGE. A claim surcharge
30 assessed by an insurer against a physician or health care provider
31 under a professional liability insurance policy may be based only
32 on claims actually paid by an insurer as a result of:

33 (1) a settlement; or

34 (2) an adverse judgment or decision of a court.

35 (V.T.I.C. Art. 5.15-1, Sec. 9.)

36 Source Law

37 Sec. 9. A claim surcharge assessed by an insurer
38 against a health care provider or physician under a
39 professional liability insurance policy may be based
40 only on claims actually paid by an insurer as a result
41 of a settlement or an adverse judgment or an adverse
42 decision of a court.

43 Revised Law

44 Sec. 1901.056. ABSOLUTE RATES PROHIBITED. (a) In this
45 section, "absolute rates" means rates, rating plans, or rating

1 classifications that are filed under Chapter 2251 or Article 5.13-2
2 by an insurer or authorized rating organization and that are
3 required to be used, to the exclusion of all others, by each insurer
4 authorized to write policies.

5 (b) A provision of this chapter, Chapter 2251, or Article
6 5.13-2 relating to the regulation of rates, rating plans, and
7 rating classifications for professional liability insurance for
8 physicians and health care providers does not:

9 (1) give the commissioner the power to promulgate
10 uniform or absolute rates; or

11 (2) prevent different insurers or organizations
12 authorized to file rates from filing different rates for risks in a
13 given classification or modified rates for individual risks made in
14 accordance with rating plans. (V.T.I.C. Art. 5.15-1, Sec. 4(b).)

15 Source Law

16 (b) Nothing contained in this article or other
17 provisions of this subchapter concerning the
18 regulation of rates, rating plans, and rating
19 classifications shall, as applies to the writing of
20 professional liability insurance for health care
21 providers and physicians, give the board the power to
22 prescribe uniform or absolute rates; nor shall
23 anything therein be construed as preventing the filing
24 of different rates for risks in a given classification
25 or modified rates for individual risks made in
26 accordance with rating plans, as filed by different
27 insurers or organizations authorized to file such
28 rates. As used in this subsection, "absolute rates"
29 means rates, rating classifications, or rating plans
30 filed by an insurer or authorized rating organization
31 in accordance with this subchapter and the rates,
32 rating classifications, or rating plans so filed are
33 required to be used, to the exclusion of all others, by
34 each insurer lawfully engaged in writing policies.

35 Revisor's Note

36 Section 4(b), V.T.I.C. Article 5.15-1, refers to
37 the filing and regulation of rates, rating plans, and
38 rating classifications under "this subchapter,"
39 meaning Subchapter B, V.T.I.C. Chapter 5. The
40 pertinent provisions of Subchapter B, Chapter 5, are
41 contained in V.T.I.C. Article 5.13-2, revised in part
42 in Chapter 2251 of this code, and the revised law is
43 drafted accordingly. Although Chapter 2251 is also

1 derived in part from V.T.I.C. Article 5.13-2C, the
2 revised law refers to that chapter in its entirety for
3 the reason stated in the revisor's note to Section
4 1901.003.

5 Revised Law

6 Sec. 1901.057. CONSIDERATIONS IN APPROVING RATES. In
7 approving rates under this chapter, the commissioner shall consider
8 the impact of risk management courses taken by physicians and
9 health care providers in this state. (V.T.I.C. Art. 5.15-1, Sec. 3
10 (part).)

11 Source Law

12 Sec. 3. Rates shall be made in accordance with
13 the following provisions:

14 . . .
15 (b) The State Board of Insurance shall
16 consider the impact of risk management courses taken
17 by physicians and health care providers in this state
18 in approving rates under this article.
19 . . .

20 [Sections 1901.058-1901.100 reserved for expansion]

21 SUBCHAPTER C. REVIEW OF RATES

22 Revised Law

23 Sec. 1901.101. RECONSIDERATION OF RATES AND
24 PREMIUMS. (a) Each insurer to which this chapter applies shall
25 adopt a procedure for reconsideration of a rate or premium charged a
26 physician or health care provider for professional liability
27 insurance coverage.

28 (b) The procedure must include:

29 (1) an opportunity for a hearing before officers or
30 employees who have responsibility for determining rates and
31 premiums to be charged for professional liability insurance; and

32 (2) a requirement that the insurer reconsider the rate
33 or premium and provide the physician or health care provider a
34 written explanation of the rate or premium being charged.
35 (V.T.I.C. Art. 5.15-1, Sec. 4B(a).)

36 Source Law

37 Sec. 4B. (a) Each insurer covered by this
38 article shall adopt a procedure for reconsideration of

1 a rate or premium charged a physician or health care
2 provider for professional liability insurance
3 coverage. The procedure shall include an opportunity
4 for a hearing before officers or employees who have
5 responsibility for determining rates and premiums to
6 be charged for professional liability insurance and a
7 requirement that the insurer reconsider the rate or
8 premium and provide the physician or health care
9 provider a written explanation of the rate or premium
10 being charged.

11 Revised Law

12 Sec. 1901.102. APPEAL. A physician or health care provider
13 that is not satisfied with a decision under procedures established
14 under Section 1901.101 may appeal to the commissioner for:

15 (1) a review of the rate or premium; and

16 (2) a determination of whether the rate or premium
17 being charged complies with criteria under Sections
18 1901.051-1901.054 and 1901.057. (V.T.I.C. Art. 5.15-1, Sec.
19 4B(b).)

20 Source Law

21 (b) If a physician or health care provider is
22 not satisfied with a decision under procedures
23 established under Subsection (a) of this section, the
24 physician or health care provider may appeal to the
25 State Board of Insurance for a review of the rate or
26 premium and a determination if the rate or premium
27 being charged complies with criteria under Section 3
28 of this article.

29 [Sections 1901.103-1901.150 reserved for expansion]

30 SUBCHAPTER D. BEST PRACTICES FOR NURSING HOMES

31 Revised Law

32 Sec. 1901.151. BEST PRACTICES. (a) The commissioner
33 shall adopt best practices for risk management and loss control
34 that may be used by for-profit and not-for-profit nursing homes.

35 (b) In developing or amending the best practices, the
36 commissioner shall consult with the Health and Human Services
37 Commission and a task force appointed by the commissioner.

38 (c) The task force must be composed of representatives of:

39 (1) insurers that write professional liability
40 insurance for nursing homes;

41 (2) the Texas Medical Liability Insurance
42 Underwriting Association;

1 (3) nursing homes; and
2 (4) consumers. (V.T.I.C. Art. 5.15-4, Secs. (a),
3 (c).)

4 Source Law

5 Art. 5.15-4. (a) The commissioner shall adopt
6 best practices for risk management and loss control
7 that may be used by for-profit and not-for-profit
8 nursing homes.

9 (c) In developing or amending best practices for
10 for-profit and not-for-profit nursing homes, the
11 commissioner shall consult with the Health and Human
12 Services Commission and a task force appointed by the
13 commissioner. The task force must be composed of
14 representatives of:

- 15 (1) insurance companies that write
16 professional liability insurance for nursing homes;
17 (2) the Texas Medical Liability Insurance
18 Underwriting Association;
19 (3) nursing homes; and
20 (4) consumers.

21 Revised Law

22 Sec. 1901.152. CONSIDERATION OF BEST PRACTICES IN SETTING
23 RATES. In setting rates for professional liability insurance
24 applicable to a for-profit or not-for-profit nursing home, an
25 insurer or the Texas Medical Liability Insurance Underwriting
26 Association may consider whether the nursing home adopts and
27 implements the best practices adopted under this subchapter.
28 (V.T.I.C. Art. 5.15-4, Sec. (b).)

29 Source Law

30 (b) In determining rates for professional
31 liability insurance applicable to a for-profit or
32 not-for-profit nursing home, an insurance company or
33 the Texas Medical Liability Insurance Underwriting
34 Association may consider whether the nursing home
35 adopts and implements the best practices adopted by
36 the commissioner under Subsection (a) of this article.

37 Revised Law

38 Sec. 1901.153. STANDARD OF CARE FOR CIVIL ACTIONS NOT
39 ESTABLISHED. The best practices for risk management and loss
40 control adopted under this subchapter do not establish standards of
41 care for nursing homes applicable in a civil action against a
42 nursing home. (V.T.I.C. Art. 5.15-4, Sec. (d).)

43 Source Law

44 (d) The best practices for risk management and

1 loss control adopted under this article do not
2 establish standards of care for nursing homes
3 applicable in a civil action against a nursing home.

4 [Sections 1901.154-1901.200 reserved for expansion]

5 SUBCHAPTER E. POLICY FORMS

6 Revised Law

7 Sec. 1901.201. STANDARDIZED POLICY FORMS; APPROVAL OF OTHER
8 FORMS. (a) The commissioner shall prescribe standardized policy
9 forms for occurrence, claims-made, and claims-paid professional
10 liability insurance policies for physicians and health care
11 providers.

12 (b) An insurer may not use a form other than a standardized
13 policy form in writing professional liability insurance for
14 physicians and health care providers unless the form has been
15 approved by the commissioner.

16 (c) An insurer writing professional liability insurance for
17 physicians and health care providers may use an endorsement if the
18 endorsement has been filed with and approved by the commissioner.
19 (V.T.I.C. Art. 5.15-1, Sec. 4(c).)

20 Source Law

21 (c) The State Board of Insurance shall prescribe
22 standardized policy forms for occurrence, claims-made
23 and claims-paid policies of professional liability
24 insurance covering health care providers and
25 physicians, and no insurer may use any other forms in
26 writing professional liability insurance for health
27 care providers and physicians without the prior
28 approval of the State Board of Insurance. However, an
29 insurer writing professional liability insurance for
30 health care providers and physicians may use any form
31 of endorsement if the endorsement is first submitted
32 to and approved by the board.

33 [Sections 1901.202-1901.250 reserved for expansion]

34 SUBCHAPTER F. COVERAGE

35 Revised Law

36 Sec. 1901.251. PREMIUM BASIS. An insurer may not write a
37 professional liability insurance policy under this chapter on less
38 than an annual premium basis. (V.T.I.C. Art. 5.15-1, Sec. 6.)

39 Source Law

40 Sec. 6. Policies of professional liability
41 insurance under this article shall be written on not
42 less than an annual premium basis.

Revised Law

Sec. 1901.252. COVERAGE FOR EXEMPLARY DAMAGES. (a) Except as provided by Subsection (b), a medical professional liability insurance policy issued to or renewed for a physician or health care provider in this state may not include coverage for exemplary damages that may be assessed against the physician or health care provider.

(b) The commissioner may approve an endorsement form that provides for coverage for exemplary damages for use on a medical professional liability insurance policy issued to:

- (1) a hospital; or
- (2) a for-profit or not-for-profit nursing home or assisted living facility. (V.T.I.C. Art. 5.15-1, Sec. 8.)

Source Law

Sec. 8. No policy of medical professional liability insurance issued to or renewed for a health care provider or physician in this state may include coverage for exemplary damages that may be assessed against the health care provider or physician; provided, however, that the commissioner may approve an endorsement form that provides for coverage for exemplary damages to be used on a policy of medical professional liability insurance issued to a hospital, as the term "hospital" is defined in this article, or to a for-profit or not-for-profit nursing home or assisted living facility.

Revised Law

Sec. 1901.253. NOTICE OF PREMIUM INCREASE, CANCELLATION, OR NONRENEWAL. (a) An insurer that issues a professional liability insurance policy for a physician or health care provider must provide to the insured written notice of at least 90 days if the insurer intends to:

- (1) increase the premiums on the policy; or
- (2) cancel or not renew the policy for a reason other than for nonpayment of premiums or because the insured is no longer licensed.

(b) If the insurer intends to increase the premiums, the insurer shall state in the notice the amount of the increase.

(c) If the insurer intends to cancel or not renew the

1 policy, the insurer shall state in the notice the reason for
2 cancellation or nonrenewal.

3 (d) An insurer may provide notice of cancellation under this
4 section only within the first 90 days from the effective date of the
5 policy. (V.T.I.C. Art. 5.15-1, Sec. 7.)

6 Source Law

7 Sec. 7. An insurer who issues a policy of
8 professional liability insurance covered by this
9 article shall give at least 90 days' written notice to
10 an insured if premiums on the insurance are to be
11 increased or the policy is to be cancelled or is not to
12 be renewed other than for nonpayment of premiums or
13 because the insured is no longer licensed. If the
14 premiums are to be increased, the notice shall state
15 the amount of the increase, and if the policy is to be
16 cancelled or is not to be renewed, the insurer shall
17 state in the notice the reason for cancellation or
18 nonrenewal. Notice of cancellation under this section
19 may only be given within the first 90 days from the
20 effective date of the policy.

21 CHAPTER 1902. CERTAIN LIABILITY COVERAGE FOR

22 PHYSICIANS AND HEALTH CARE PROVIDERS

23 Sec. 1902.001. DEFINITIONS 866

24 Sec. 1902.002. COVERAGE FOR PHYSICIANS OR HEALTH CARE
25 PROVIDERS UNDER VENDOR ENDORSEMENTS
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27 Sec. 1902.003. EXCLUSIONS AND LIMITATIONS ON COVERAGE
28 UNDER VENDOR ENDORSEMENTS PROHIBITED 867

29 CHAPTER 1902. CERTAIN LIABILITY COVERAGE FOR

30 PHYSICIANS AND HEALTH CARE PROVIDERS

31 Revised Law

32 Sec. 1902.001. DEFINITIONS. In this chapter:

33 (1) "Health care provider" has the meaning assigned
34 by Section 1901.001.

35 (2) "Manufacturer" has the meaning assigned by Section
36 82.001, Civil Practice and Remedies Code.

37 (3) "Physician" has the meaning assigned by Section
38 1901.001. (New; V.T.I.C. Art. 5.15-1, Sec. 11 (part).)

39 Source Law

40 Sec. 11. [An insurer may not exclude or
41 otherwise limit coverage . . . under a vendor's

endorsement issued to a manufacturer,] as that term is defined by Section 82.001, Civil Practice and Remedies Code. . . .

Revisor's Note

Section 2, V.T.I.C. Article 5.15-1, provides definitions applicable to terms used in Section 11 of that article, revised as this chapter. The revised law adds a cross-reference to the applicable definitions as revised in Section 1901.001 of this code.

Revised Law

Sec. 1902.002. COVERAGE FOR PHYSICIANS OR HEALTH CARE PROVIDERS UNDER VENDOR ENDORSEMENTS OR CERTAIN POLICIES. A physician or health care provider is considered a vendor for purposes of coverage under a vendor's endorsement or a manufacturer's general liability or products liability policy. (V.T.I.C. Art. 5.15-1, Sec. 11 (part).)

Source Law

Sec. 11. . . . A physician or health care provider shall be considered a vendor for purposes of coverage under a vendor's endorsement or a manufacturer's general liability or products liability policy.

Revised Law

Sec. 1902.003. EXCLUSIONS AND LIMITATIONS ON COVERAGE UNDER VENDOR ENDORSEMENTS PROHIBITED. An insurer may not exclude or otherwise limit coverage for physicians or health care providers under a vendor's endorsement issued to a manufacturer. (V.T.I.C. Art. 5.15-1, Sec. 11 (part).)

Source Law

Sec. 11. An insurer may not exclude or otherwise limit coverage for physicians or health care providers under a vendor's endorsement issued to a manufacturer,

CHAPTER 1903. LOSS CONTROL INFORMATION AND SERVICES
SUBCHAPTER A. LOSS CONTROL SERVICES FOR
PROFESSIONAL LIABILITY INSURANCE FOR HOSPITALS

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3 [Sections 1903.006-1903.050 reserved for expansion]

4 SUBCHAPTER B. LOSS CONTROL INFORMATION FOR GENERAL AND CERTAIN

5 PROFESSIONAL LIABILITY INSURANCE

6 Sec. 1903.051. LOSS CONTROL INFORMATION REQUIRED 873

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9 [Sections 1903.054-1903.100 reserved for expansion]

10 SUBCHAPTER C. CIVIL PROCEEDINGS

11 Sec. 1903.101. IMMUNITY FROM LIABILITY 875

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13 DISCOVERABLE OR ADMISSIBLE 876

14 CHAPTER 1903. LOSS CONTROL INFORMATION AND SERVICES

15 SUBCHAPTER A. LOSS CONTROL SERVICES FOR

16 PROFESSIONAL LIABILITY INSURANCE FOR HOSPITALS

17 Revised Law

18 Sec. 1903.001. DEFINITION. In this subchapter, "hospital"

19 means a public or private institution licensed under Chapter 241 or

20 577, Health and Safety Code. (V.T.I.C. Art. 5.15-2, Sec. (e).)

21 Source Law

22 (e) In this article, "hospital" means a licensed

23 public or private institution as defined in Chapter

24 241, Health and Safety Code, or in Section 88, Chapter

25 243, Acts of the 55th Legislature, Regular Session,

26 1957 (Article 5547-88, Vernon's Texas Civil Statutes).

27 Revisor's Note

28 Section (e), V.T.I.C. Article 5.15-2, refers to

29 Section 88, Chapter 243, Acts of the 55th Legislature,

30 Regular Session, 1957 (Article 5547-88, Vernon's Texas

31 Civil Statutes). Article 5547-88 was codified in 1991

32 in Chapter 577, Health and Safety Code, which governs

33 the licensing of certain mental health facilities.

34 The revised law is drafted accordingly.

35 Revised Law

36 Sec. 1903.002. INAPPLICABILITY OF SUBCHAPTER. This

1 subchapter and Subchapter C do not apply to insurance policies that
2 provide excess coverage issued by the Texas Medical Liability
3 Insurance Underwriting Association under Chapter 2203, or to those
4 policies if the policies are serviced by an insurer acting as a
5 servicing carrier under an agreement entered into between the
6 association and the insurer and approved by the commissioner.
7 (V.T.I.C. Art. 5.15-2, Sec. (f).)

8 Source Law

9 (f) This article does not apply to insurance
10 policies that provide excess coverage issued by the
11 Texas Medical Liability Insurance Underwriting
12 Association under Article 21.49-3 of this code, and
13 does not apply to those policies if serviced by an
14 insurer acting as a servicing carrier under an
15 agreement entered into between the Texas Medical
16 Liability Insurance Underwriting Association and the
17 insurer and approved by the State Board of Insurance.

18 Revisor's Note

19 (1) Section (f), V.T.I.C. Article 5.15-2,
20 refers to insurance policies that provide excess
21 coverage issued by the Texas Medical Liability
22 Insurance Underwriting Association under V.T.I.C.
23 Article 21.49-3. The relevant provisions of Article
24 21.49-3 are revised in Chapter 2203 of this code. That
25 chapter also contains provisions derived from V.T.I.C.
26 Article 21.49-3d, which relates to the issuance of
27 bonds on behalf of the association to provide certain
28 professional liability insurance. The revised law
29 refers to Chapter 2203 in its entirety because the
30 provisions of that chapter that are derived from
31 Article 21.49-3d do not relate to the issuance of
32 policies by the association.

33 (2) Section (f), V.T.I.C. Article 5.15-2,
34 refers to the State Board of Insurance. Chapter 685,
35 Acts of the 73rd Legislature, Regular Session, 1993,
36 abolished the board and transferred its functions to
37 the commissioner of insurance and the Texas Department
38 of Insurance. Throughout this chapter, references to

1 the board have been changed appropriately.

2 Revised Law

3 Sec. 1903.003. LOSS CONTROL SERVICES REQUIRED. (a) Before
4 writing professional liability insurance for a hospital in this
5 state, an insurer must maintain or provide loss control facilities
6 that:

7 (1) provide loss control services reasonably
8 commensurate with the risks, exposures, and experience of the
9 insured's business;

10 (2) are adequate to provide loss control services
11 required by the nature of the policyholder's operations; and

12 (3) include surveys, recommendations, training
13 programs, consultations, and analyses of accident causes.

14 (b) To provide the facilities required by this section, the
15 insurer may:

16 (1) employ qualified personnel;

17 (2) retain qualified independent contractors;

18 (3) contract with the policyholder to provide
19 qualified loss control personnel and services; or

20 (4) use a combination of methods described by this
21 subsection.

22 (c) Independent contractors and other personnel described
23 by Subsection (b) must have the qualifications of a field safety
24 representative. A field safety representative must be an
25 individual who:

26 (1) holds a:

27 (A) bachelor's degree in science or engineering;

28 (B) bachelor of arts degree in nursing;

29 (C) bachelor of science degree in nursing,
30 pharmacy, or physical therapy; or

31 (D) master's degree in hospital administration;

32 (2) is a licensed engineer;

33 (3) is a certified safety professional;

34 (4) is a certified industrial hygienist;

1 (5) has at least 10 years' experience in occupational
2 safety and health; or

3 (6) has completed a course of training in loss control
4 services approved by the department. (V.T.I.C. Art. 5.15-2, Secs.
5 (a), (b).)

6 Source Law

7 Art. 5.15-2. (a) Any insurer desiring to write
8 professional liability insurance for hospitals in
9 Texas shall maintain or provide loss control
10 facilities as a prerequisite for writing such
11 insurance. Such facilities shall be adequate to
12 furnish loss control services required by the nature
13 of its policyholder's operations and shall include
14 surveys, recommendations, training programs,
15 consultations, and analyses of accident causes. Each
16 field safety representative shall be either a college
17 graduate who shall have a bachelor's degree in science
18 or engineering, a bachelor of arts degree in nursing, a
19 bachelor of science degree in nursing, pharmacy, or
20 physical therapy, or a master's degree in hospital
21 administration, or shall be a registered professional
22 engineer, a certified safety professional, a certified
23 industrial hygienist, an individual with 10 years'
24 experience in occupational safety and health, or an
25 individual who shall have completed a course of
26 training in loss control services approved by the
27 State Board of Insurance.

28 (b) The insurer shall render loss control
29 services to its policyholders reasonably commensurate
30 with the risks and exposures and experience of the
31 insured's business. To provide such facilities, the
32 insurer may employ qualified personnel, retain
33 qualified independent contractors, contract with the
34 policyholder to provide qualified loss control
35 personnel and services, or use a combination of the
36 methods enumerated in this subsection. Such personnel
37 shall have the qualification required for field safety
38 representatives as provided in Subsection (a) of this
39 article.

40 Revisor's Note

41 Section (a), V.T.I.C. Article 5.15-2, refers to a
42 "registered professional engineer." The revised law
43 substitutes "engineer" for "professional engineer"
44 because "engineer" is the term used by Chapter 1001,
45 Occupations Code, which regulates engineers. The
46 revised law also substitutes "licensed" for
47 "registered" because that chapter requires that a
48 person hold a license to engage in the practice of
49 engineering.

1 Revised Law

2 Sec. 1903.004. SANCTIONS. (a) If there is evidence that
3 reasonable loss control services are not being maintained or
4 provided by an insurer as required by this subchapter or are not
5 being used by the insurer in a reasonable manner to prevent injury
6 to patients of the insurer's policyholders, the commissioner shall
7 order a hearing to determine whether the insurer is not in
8 compliance with this subchapter.

9 (b) If it is determined that the insurer is not in
10 compliance, the commissioner may impose any sanction authorized by
11 Chapter 82. (V.T.I.C. Art. 5.15-2, Sec. (c).)

12 Source Law

13 (c) If the Commissioner of Insurance shall
14 determine that reasonable loss control services are
15 not being maintained or provided by the insurer or are
16 not being used by the insurer in a reasonable manner to
17 prevent injury to patients of its policyholders, the
18 fact shall be reported to the State Board of Insurance,
19 and the board shall order a hearing to determine if the
20 insurer is not in compliance with this article. If it
21 is determined that the insurer is not in compliance,
22 the board may impose any sanctions authorized by
23 Section 7, Article 1.10, of this code.

24 Revisor's Note

25 (1) Section (c), V.T.I.C. Article 5.15-2,
26 refers to the "Commissioner of Insurance." The
27 revised law substitutes "commissioner" for
28 "Commissioner of Insurance" because Section 31.001 of
29 this code defines "commissioner" to mean the
30 commissioner of insurance for purposes of this code.

31 (2) Section (c), V.T.I.C. Article 5.15-2,
32 requires the commissioner of insurance to report
33 certain facts to the State Board of Insurance. The
34 revised law omits the requirement as unnecessary
35 because, as explained in Revisor's Note (2) to Section
36 1903.002, the State Board of Insurance was abolished
37 and its functions were transferred to the commissioner
38 and Texas Department of Insurance. In this context,
39 the function of receiving the report has been

1 transferred to the commissioner, and it is unnecessary
2 to require the commissioner to both make and receive
3 the report.

4 Revised Law

5 Sec. 1903.005. RULES. The commissioner may adopt
6 reasonable rules for the enforcement of this subchapter after
7 holding a public hearing on the proposed rules. (V.T.I.C. Art.
8 5.15-2, Sec. (d).)

9 Source Law

10 (d) The State Board of Insurance may promulgate
11 reasonable rules and regulations for the enforcement
12 of this article after holding a public hearing on the
13 proposed rules and regulations.

14 Revisor's Note

15 Section (d), V.T.I.C. Article 5.15-2, refers to
16 "rules and regulations." The reference to
17 "regulations" is omitted from the revised law because
18 under Section 311.005(5), Government Code (Code
19 Construction Act), a rule is defined to include a
20 regulation. That definition applies to the revised
21 law.

22 [Sections 1903.006-1903.050 reserved for expansion]

23 SUBCHAPTER B. LOSS CONTROL INFORMATION FOR GENERAL AND CERTAIN
24 PROFESSIONAL LIABILITY INSURANCE

25 Revised Law

26 Sec. 1903.051. LOSS CONTROL INFORMATION REQUIRED. (a)
27 Before writing professional liability insurance, including medical
28 professional liability insurance, for insureds other than
29 hospitals or general liability insurance in this state, an insurer
30 must provide to the insurer's policyholders loss control
31 information reasonably commensurate with the risks, exposures, and
32 experience of the insured's business.

33 (b) To provide the information described by Subsection (a)
34 or services, the insurer may:

35 (1) employ qualified personnel;

1 (2) retain qualified independent contractors;
2 (3) contract with the policyholder to provide
3 qualified loss control personnel and services; or
4 (4) use a combination of methods described by this
5 subsection. (V.T.I.C. Art. 5.15-3, Secs. (a), (b).)

6 Source Law

7 Art. 5.15-3. (a) Any insurer desiring to write
8 professional liability insurance for insureds other
9 than hospitals, general liability insurance, or
10 medical professional liability insurance for insureds
11 other than hospitals in this state must provide loss
12 control information as a prerequisite for writing that
13 insurance.

14 (b) The insurer shall provide loss control
15 information to its policyholders reasonably
16 commensurate with the risks and exposures and
17 experience of the insured's business. To provide this
18 information or services, the insurer may employ
19 qualified personnel, retain qualified independent
20 contractors, contract with the policyholder to provide
21 qualified accident prevention personnel and services,
22 or use a combination of the methods provided by this
23 article.

24 Revisor's Note

25 Section (b), V.T.I.C. Article 5.15-3, refers to
26 "qualified accident prevention personnel and
27 services." Section (b), V.T.I.C. Article 5.15-2,
28 revised in this chapter in Section 1903.003, refers to
29 "qualified loss control personnel and services." The
30 revised law substitutes "qualified loss control
31 personnel and services" for "qualified accident
32 prevention personnel and services" for consistency of
33 terminology throughout this chapter and because
34 "qualified loss control personnel and services" more
35 accurately describes the type of personnel and
36 services provided with respect to liability insurance.

37 Revised Law

38 Sec. 1903.052. SANCTIONS. (a) If there is evidence that
39 reasonable loss control information is not being provided by an
40 insurer as required by this subchapter or is not being used by the
41 insurer in a reasonable manner to reduce losses, the commissioner
42 shall order a hearing to determine whether the insurer is not in

1 compliance with this subchapter.

2 (b) If it is determined that the insurer is not in
3 compliance, the commissioner may impose any sanction authorized by
4 Chapter 82. (V.T.I.C. Art. 5.15-3, Sec. (c).)

5 Source Law

6 (c) If there is evidence that reasonable loss
7 control information is not being provided by the
8 insurer or is not being used by the insurer in a
9 reasonable manner to reduce losses, the State Board of
10 Insurance shall order a hearing to determine if the
11 insurer is not in compliance with this article. If it
12 is determined that the insurer is not in compliance,
13 the board may impose any of the sanctions authorized by
14 Section 7, Article 1.10, of this code.

15 Revised Law

16 Sec. 1903.053. RULES. After opportunity for a hearing, the
17 commissioner may adopt reasonable rules for the enforcement of this
18 subchapter. (V.T.I.C. Art. 5.15-3, Sec. (d).)

19 Source Law

20 (d) After opportunity for a hearing, the State
21 Board of Insurance may promulgate reasonable rules and
22 regulations for the enforcement of this article.

23 Revisor's Note

24 Section (d), V.T.I.C. Article 5.15-3, refers to
25 "rules and regulations." The reference to
26 "regulations" is omitted from the revised law for the
27 reason stated in the revisor's note to Section
28 1903.005.

29 [Sections 1903.054-1903.100 reserved for expansion]

30 SUBCHAPTER C. CIVIL PROCEEDINGS

31 Revised Law

32 Sec. 1903.101. IMMUNITY FROM LIABILITY. (a) An insurer
33 or an agent or employee of the insurer is not liable, and a cause of
34 action does not arise against the insurer, agent, or employee, for
35 an accident based on an allegation that the accident was caused or
36 could have been prevented by a program, information, inspection, or
37 other activity or service undertaken by the insurer to prevent
38 accidents or to control losses, as applicable, in connection with
39 the operations of the insured.

1 (b) The immunity from liability provided by this section
2 does not affect the liability of an insurer as otherwise provided in
3 an insurance policy. (V.T.I.C. Art. 5.15-2, Sec. (g); Art. 5.15-3,
4 Sec. (e).)

5 Source Law

6 [Art. 5.15-2]

7 (g) An insurer, its agents, servants, or
8 employees are not liable for and no cause of action
9 arises with respect to any accident based on the
10 allegation that the accident was caused or could have
11 been prevented by a program, inspection, or other
12 activity or service undertaken by the insurer for the
13 prevention of accidents in connection with operations
14 of its insured. However, this immunity does not affect
15 the liability of an insurer as otherwise provided in a
16 policy of insurance.

17 [Art. 5.15-3]

18 (e) An insurer, its agents, servants, or
19 employees are not liable and no cause of action arises
20 with respect to any accident based on the allegation
21 that the accident was caused or could have been
22 prevented by a program, information, inspection, or
23 other activity or service undertaken by the insurer
24 for the prevention of accidents or control of losses in
25 connection with operations of its insured. However,
26 this immunity does not affect the liability of an
27 insurer otherwise provided by a policy of insurance.

28 Revisor's Note

29 Section (g), V.T.I.C. Article 5.15-2, and Section
30 (e), V.T.I.C. Article 5.15-3, refer to an insurer's
31 "agents, servants, or employees." The revised law
32 omits "servants" because the term is included within
33 the meaning of "agents . . . or employees."

34 Revised Law

35 Sec. 1903.102. LOSS CONTROL INFORMATION NOT DISCOVERABLE OR
36 ADMISSIBLE. Loss control information provided by an insurer to an
37 insured is not discoverable or admissible as evidence in a civil
38 proceeding. (V.T.I.C. Art. 5.15-2, Sec. (h); Art. 5.15-3, Sec.
39 (f).)

40 Source Law

41 [Art. 5.15-2]

42 (h) Loss control information provided by an
43 insurer to an insured is not discoverable or
44 admissible in any civil proceeding as evidence.

45 [Art. 5.15-3]

46 (f) Any loss control information provided by an

insurer to an insured is not subject to discovery or
admissible in any civil proceeding as evidence.

[Chapters 1904-1950 reserved for expansion]

SUBTITLE C. AUTOMOBILE INSURANCE

CHAPTER 1951. GENERAL PROVISIONS: AUTOMOBILE INSURANCE

Sec. 1951.001. RATES FOR AUTOMOBILE INSURANCE 877

Sec. 1951.002. RULES 877

Sec. 1951.003. FORMER MILITARY VEHICLES 879

Sec. 1951.004. CRIMINAL PENALTY 879

CHAPTER 1951. GENERAL PROVISIONS: AUTOMOBILE INSURANCE

Revised Law

Sec. 1951.001. RATES FOR AUTOMOBILE INSURANCE. Rates for
personal and commercial automobile insurance in this state are
determined as provided by Chapter 2251 and Article 5.13-2.
(V.T.I.C. Art. 5.11, Sec. (c) (part).)

Source Law

(c) . . . On and after December 1, 2004, rates
for personal automobile insurance and commercial
automobile insurance in this state are determined as
provided by Article 5.13-2 of this code.

Revisor's Note

Section (c), V.T.I.C. Article 5.11, provides that
rates for commercial and personal automobile insurance
are determined as provided by V.T.I.C. Article 5.13-2.
The relevant provisions of that article that are
revised are contained in Chapter 2251 of this code.
Although that chapter contains other provisions that
are derived from V.T.I.C. Article 5.13-2C, the revised
law appropriately refers to the chapter in its
entirety because the provisions that are derived from
Article 5.13-2C do not apply by their own terms to
automobile insurance.

Revised Law

Sec. 1951.002. RULES. The commissioner may adopt and
enforce reasonable rules necessary to carry out the provisions of
this subtitle. (V.T.I.C. Art. 5.10.)

1 Source Law

2 Art. 5.10. The Board is hereby empowered to make
3 and enforce all such reasonable rules and regulations
4 not inconsistent with the provisions of this
5 subchapter as are necessary to carry out its
6 provisions.

7 Revisor's Note

8 (1) V.T.I.C. Article 5.10 refers to the "Board,"
9 meaning the Board of Insurance Commissioners. Under
10 Chapter 499, Acts of the 55th Legislature, Regular
11 Session, 1957, administration of the insurance laws of
12 this state was reorganized and the powers and duties of
13 the Board of Insurance Commissioners were transferred
14 to the State Board of Insurance. Chapter 685, Acts of
15 the 73rd Legislature, Regular Session, 1993, abolished
16 the State Board of Insurance and transferred its
17 functions to the commissioner of insurance and the
18 Texas Department of Insurance. For that reason, the
19 revised law substitutes a reference to the
20 commissioner for the reference to the Board of
21 Insurance Commissioners.

22 (2) V.T.I.C. Article 5.10 authorizes the Board
23 of Insurance Commissioners, meaning the commissioner
24 of insurance for the reasons stated in Revisor's Note
25 (1) to this section, to adopt "rules and regulations
26 not inconsistent with the provisions of this
27 subchapter." The revised law omits as unnecessary the
28 reference to "regulations" because a rule is defined
29 under Section 311.005(5), Government Code (Code
30 Construction Act), to include a regulation, and that
31 definition applies to the revised law. In addition,
32 the revised law omits the reference to "not
33 inconsistent with the provisions of this subchapter"
34 as unnecessary because the commissioner of insurance
35 does not have authority to adopt rules that are
36 inconsistent with a statute.

1 Revised Law

2 Sec. 1951.003. FORMER MILITARY VEHICLES. (a) In this
3 section, "former military vehicle" has the meaning assigned by
4 Section 504.502, Transportation Code.

5 (b) A rating plan that includes a classification applicable
6 to antique, privately owned passenger vehicles that are maintained
7 primarily for use in exhibitions, club activities, parades, or
8 other functions of public interest and that may be used
9 occasionally for other purposes must include in that classification
10 former military vehicles maintained for those uses. (V.T.I.C.
11 Art. 5.01-3.)

12 Source Law

13 Art. 5.01-3. (a) A rating plan that includes a
14 classification applicable to antique, private
15 passenger vehicles maintained primarily for use in
16 exhibitions, club activities, parades, and other
17 functions of public interest and occasionally used for
18 other purposes must include in the classification
19 former military vehicles maintained for those uses.

20 (b) In this article, "former military vehicle"
21 has the meaning assigned by Section 502.275,
22 Transportation Code.

23 Revisor's Note

24 Section (b), V.T.I.C. Article 5.01-3, provides
25 that "'former military vehicle' has the meaning
26 assigned by Section 502.275, Transportation Code."
27 Section 502.275, Transportation Code, was repealed by
28 Chapter 1320, Acts of the 78th Legislature, Regular
29 Session, 2003, which enacted Chapter 504,
30 Transportation Code, relating to specialty license
31 plates. "Former military vehicle" is now defined by
32 Section 504.502, Transportation Code, and the revised
33 law is drafted accordingly.

34 Revised Law

35 Sec. 1951.004. CRIMINAL PENALTY. (a) An insurer, or an
36 officer or representative of an insurer, commits an offense if the
37 insurer, officer, or representative violates:

38 (1) Section 1951.001, 1951.002, 1952.051, 1952.052,

1 1952.053, 1952.054, or 1952.055;

2 (2) Subchapter B, Chapter 1806;

3 (3) Chapter 254; or

4 (4) Article 5.01, 5.02, 5.03, 5.05, 5.06, 5.10, or
5 5.11.

6 (b) An offense under this section is a misdemeanor
7 punishable by a fine of not less than \$100 or more than \$500.

8 (V.T.I.C. Art. 5.12-1 (part).)

9 Source Law

10 Art. 5.12-1. Any insurer or officer or
11 representative thereof which shall violate any
12 provision of this Act . . . shall be deemed guilty of a
13 misdemeanor and, upon conviction thereof, shall be
14 punished by a fine of not less than One Hundred
15 (\$100.00) Dollars nor more than Five Hundred (\$500.00)
16 Dollars for each such offense.

17 Revisor's Note

18 (1) V.T.I.C. Article 5.12-1 refers to certain
19 sanctions imposed on an insurer or an officer or
20 representative of an insurer for a violation of "this
21 Act." Article 5.12-1 was transferred from Article
22 571a, Vernon's Annotated Penal Code, by authority of
23 Section 5, Chapter 399, Acts of the 63rd Legislature,
24 Regular Session, 1973, enacting the current Texas
25 Penal Code. Former Article 571a was originally
26 enacted as Section 12, Chapter 253, Acts of the 40th
27 Legislature, Regular Session, 1927. Sections 1-11 of
28 that chapter were originally published as Article
29 4682b, Vernon's Texas Civil Statutes. Article 4682b
30 was codified as Subchapter A, V.T.I.C. Chapter 5,
31 which consisted of V.T.I.C. Articles 5.01, 5.02, 5.03,
32 5.04, 5.05, 5.06, 5.07, 5.08, 5.09, 5.10, 5.11, and
33 5.12, by Chapter 491, Acts of the 52nd Legislature,
34 Regular Session, 1951. The revised law omits the
35 references to Article 5.04 and to the portion of
36 Article 5.12 that is revised in Chapter 251 of this
37 code, because those laws relate to powers and duties of

1 the commissioner of insurance and do not contain
2 provisions that an insurer or an officer or
3 representative of an insurer could violate.

4 (2) V.T.I.C. Article 5.12-1 in part provides
5 that an insurer or an officer or representative of an
6 insurer is subject to revocation of the insurer's,
7 officer's, or representative's license by the Board of
8 Insurance Commissioners for a violation of "this Act,"
9 meaning V.T.I.C. Articles 5.01, 5.02, 5.03, 5.04,
10 5.05, 5.06, 5.07, 5.08, 5.09, 5.10, 5.11, and 5.12, for
11 the reason stated in Revisor's Note (1) to this
12 section. For the reasons stated in Revisor's Note (1)
13 to Section 1951.002, the commissioner of insurance now
14 has the authority to revoke a license under Article
15 5.12-1 that was formerly granted to the board. The
16 revised law omits the referenced provision of Article
17 5.12-1 as unnecessary. Section 82.051 of this code
18 authorizes the commissioner to revoke a certificate of
19 authority, which includes a license, after notice and
20 an opportunity for hearing if the holder of the
21 authorization violates this code. That revocation
22 procedure applies to an insurer, officer, or
23 representative that violates one of the listed
24 provisions without an additional statement to that
25 effect. The omitted law reads:

26 Art. 5.12-1. [Any insurer or officer
27 or representative thereof which shall
28 violate any provision of this Act] shall be
29 subject to a revocation of his or its
30 license by the Board of Insurance
31 Commissioners and in addition

32 CHAPTER 1952. POLICY PROVISIONS AND FORMS FOR
33 AUTOMOBILE INSURANCE

34 SUBCHAPTER A. GENERAL PROVISIONS

35 Sec. 1952.001. APPLICABILITY OF CHAPTER 884
36 [Sections 1952.002-1952.050 reserved for expansion]

1 SUBCHAPTER B. POLICY FORMS AND PROVISIONS IN GENERAL

2 Sec. 1952.051. POLICY FORMS FOR AUTOMOBILE INSURANCE 885

3 Sec. 1952.052. USE OF PREVIOUSLY APPROVED OR ADOPTED

4 POLICY FORMS AUTHORIZED 886

5 Sec. 1952.053. WITHDRAWAL OF APPROVAL 887

6 Sec. 1952.054. REQUIRED DISCLOSURES REGARDING

7 SHORT-TERM POLICIES 888

8 Sec. 1952.055. CERTIFICATE OF INSURANCE AS SUBSTITUTE

9 FOR INSURANCE POLICY 890

10 Sec. 1952.056. REQUIRED PROVISION: COVERAGE FOR

11 CERTAIN SPOUSES 892

12 Sec. 1952.057. PROHIBITED PROVISION: PAYMENT ON

13 CONVICTION FOR DRUG OFFENSE 892

14 Sec. 1952.058. LOSS CONTROL INFORMATION AND SERVICES

15 REQUIRED 893

16 [Sections 1952.059-1952.100 reserved for expansion]

17 SUBCHAPTER C. UNINSURED OR UNDERINSURED MOTORIST COVERAGE

18 Sec. 1952.101. UNINSURED OR UNDERINSURED MOTORIST

19 COVERAGE REQUIRED 896

20 Sec. 1952.102. UNINSURED MOTOR VEHICLE 899

21 Sec. 1952.103. UNDERINSURED MOTOR VEHICLE 900

22 Sec. 1952.104. REQUIRED PROVISIONS RELATING TO

23 UNINSURED OR UNDERINSURED MOTORIST

24 COVERAGE 900

25 Sec. 1952.105. LIABILITY LIMITS 901

26 Sec. 1952.106. RECOVERY UNDER UNDERINSURED MOTORIST

27 COVERAGE 902

28 Sec. 1952.107. RECOVERY UNDER COLLISION OR COMBINED

29 COVERAGE 903

30 Sec. 1952.108. INSURER'S RIGHT OF RECOVERY 904

31 Sec. 1952.109. BURDEN OF PROOF IN DISPUTE 905

32 Sec. 1952.110. VENUE 905

33 [Sections 1952.111-1952.150 reserved for expansion]

1 SUBCHAPTER D. PERSONAL INJURY PROTECTION COVERAGE

2 Sec. 1952.151. PERSONAL INJURY PROTECTION 906

3 Sec. 1952.152. PERSONAL INJURY PROTECTION COVERAGE

4 REQUIRED 907

5 Sec. 1952.153. MAXIMUM REQUIRED AMOUNT OF PERSONAL

6 INJURY PROTECTION 908

7 Sec. 1952.154. LOSS OF INCOME BENEFITS 908

8 Sec. 1952.155. BENEFITS PAYABLE WITHOUT REGARD TO

9 FAULT OR COLLATERAL SOURCE; EFFECT ON

10 SUBROGATION 908

11 Sec. 1952.156. PAYMENT OF BENEFITS 909

12 Sec. 1952.157. ACTION FOR FAILURE TO PAY BENEFITS 910

13 Sec. 1952.158. EXCLUSION OF BENEFITS 911

14 Sec. 1952.159. OFFSET AGAINST LIABILITY CLAIM 911

15 Sec. 1952.160. INAPPLICABILITY TO ACCIDENT OR HEALTH

16 INSURANCE 912

17 Sec. 1952.161. CERTAIN COVERAGE UNAFFECTED 913

18 [Sections 1952.162-1952.200 reserved for expansion]

19 SUBCHAPTER E. SHORT-TERM LIABILITY INSURANCE FOR

20 CERTAIN MOTORISTS

21 Sec. 1952.201. APPLICABILITY OF SUBCHAPTER 914

22 Sec. 1952.202. DEFINITIONS 914

23 Sec. 1952.203. SHORT-TERM LIABILITY INSURANCE PROGRAM 915

24 Sec. 1952.204. AGENT LICENSE REQUIRED 915

25 Sec. 1952.205. SALE OF SHORT-TERM LIABILITY INSURANCE

26 POLICIES 916

27 [Sections 1952.206-1952.250 reserved for expansion]

28 SUBCHAPTER F. GARAGE INSURANCE

29 Sec. 1952.251. DEFINITIONS 916

30 Sec. 1952.252. GARAGE INSURANCE 917

31 [Sections 1952.253-1952.300 reserved for expansion]

1 SUBCHAPTER G. REPAIR OF MOTOR VEHICLES

2 Sec. 1952.301. LIMITATION ON PARTS, PRODUCTS, OR

3 REPAIR PERSONS OR FACILITIES

4 PROHIBITED 919

5 Sec. 1952.302. PROHIBITED ACTS IN CONNECTION WITH

6 REPAIR OF MOTOR VEHICLE 920

7 Sec. 1952.303. CONTRACTS BETWEEN INSURER AND REPAIR

8 PERSON OR FACILITY 921

9 Sec. 1952.304. PROVISION OF INFORMATION REGARDING

10 REPAIRS 922

11 Sec. 1952.305. NOTICE OF RIGHTS REGARDING REPAIR OF

12 MOTOR VEHICLE 922

13 Sec. 1952.306. COMPLAINTS 923

14 Sec. 1952.307. RULES 923

15 CHAPTER 1952. POLICY PROVISIONS AND FORMS FOR

16 AUTOMOBILE INSURANCE

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Revised Law

19 Sec. 1952.001. APPLICABILITY OF CHAPTER. Except as

20 provided by Section 1952.201, this chapter applies to an insurer

21 writing automobile insurance in this state, including an insurance

22 company, corporation, reciprocal or interinsurance exchange,

23 mutual insurance company, association, Lloyd's plan, or other

24 insurer. (V.T.I.C. Art. 5.01, Sec. (a) (part).)

25 Source Law

26 Art. 5.01. (a) Every insurance company,

27 corporation, interinsurance exchange, mutual,

28 reciprocal, association, Lloyd's or other insurer,

29 hereinafter called insurer, writing any form of motor

30 vehicle insurance in this State,

31 Revisor's Note

32 (1) Section (a), V.T.I.C. Article 5.01, in part

33 states the general applicability of Subchapter A,

34 V.T.I.C. Chapter 5. The provisions revised in this

35 chapter are derived from that subchapter. V.T.I.C.

36 Article 5.01C, revised in this chapter as Subchapter

1 E, is included in Subchapter A, Chapter 5. Section
2 1(1), Article 5.01C, revised in this chapter as
3 Section 1952.201, states the applicability of Article
4 5.01C, which is different from the general
5 applicability of Subchapter A, Chapter 5. For that
6 reason, the revised law adds a cross-reference to
7 Section 1952.201 for the convenience of the reader.

8 (2) Section (a), V.T.I.C. Article 5.01, refers
9 to an "interinsurance exchange," a "mutual," a
10 "reciprocal," and a "Lloyd's." For consistent use of
11 terminology throughout this code, the revised law
12 substitutes for the quoted language references to a
13 "reciprocal or interinsurance exchange," a "mutual
14 insurance company," and a "Lloyd's plan." Similar
15 changes have been made throughout this chapter.

16 (3) Section (a), V.T.I.C. Article 5.01, refers
17 to "motor vehicle insurance." Throughout this
18 chapter, the revised law substitutes "automobile
19 insurance" for "motor vehicle insurance" for
20 consistency of terminology in this code. "Automobile
21 insurance" is the term more commonly used to describe
22 the kind of insurance that provides coverage for motor
23 vehicles.

24 [Sections 1952.002-1952.050 reserved for expansion]

25 SUBCHAPTER B. POLICY FORMS AND PROVISIONS IN GENERAL

26 Revised Law

27 Sec. 1952.051. POLICY FORMS FOR AUTOMOBILE INSURANCE.
28 Notwithstanding Subsections (1)-(4) and (7), Article 5.06, policy
29 forms and endorsements for automobile insurance in this state are
30 regulated under Chapter 2301 and Article 5.13-2. (V.T.I.C. Art.
31 5.06, Sec. (12)(a).)

32 Source Law

33 (12)(a) Notwithstanding Subsections (1)-(10) of
34 this article, policy forms and endorsements for
35 automobile insurance in this state are regulated under

1 Article 5.13-2 of this code.

2 Revisor's Note

3 Section (12)(a), V.T.I.C. Article 5.06, provides
4 that "[n]otwithstanding Subsections (1)-(10) of this
5 article," policy forms and endorsements for automobile
6 insurance in this state are regulated under V.T.I.C.
7 Article 5.13-2. The relevant provisions of Article
8 5.13-2 that are revised are contained in Chapter 2301.
9 That chapter also contains provisions that are derived
10 from V.T.I.C. Article 5.145. The revised law
11 appropriately refers to Chapter 2301 in its entirety
12 because the provisions of that chapter that are
13 derived from Article 5.145 are necessary to construe
14 the provisions of Article 5.13-2 that are revised in
15 that chapter.

16 In addition, the revised law substitutes a
17 reference to "Subsections (1)-(4) and (7), Article
18 5.06," for the reference to Subsections (1)-(10) of
19 that article because Subsections (5) and (6), revised
20 in this chapter as Section 1952.055, Subsection (8),
21 revised in this chapter as Section 1952.053, and
22 Subsections (9) and (10), revised in this chapter as
23 Section 1952.054, apply on their own terms and do not
24 conflict with Article 5.13-2.

25 Revised Law

26 Sec. 1952.052. USE OF PREVIOUSLY APPROVED OR ADOPTED POLICY
27 FORMS AUTHORIZED. An insurer may continue to use a policy form or
28 endorsement approved or adopted by the commissioner under Article
29 5.06 before June 11, 2003, on notification in writing to the
30 commissioner that the insurer will continue to use the policy form
31 or endorsement. (V.T.I.C. Art. 5.06, Sec. (12)(b).)

32 Source Law

33 (b) An insurer may continue to use the
34 policy forms and endorsements promulgated, approved,
35 or adopted by the commissioner under this article
36 before the effective date of S.B. No. 14, Acts of the

1 78th Legislature, Regular Session, 2003, on
2 notification in writing to the commissioner that the
3 insurer will continue to use the policy forms and
4 endorsements promulgated, approved, or adopted by the
5 commissioner under this article.

6 Revisor's Note

7 (1) Section (12)(b), V.T.I.C. Article 5.06,
8 refers to forms and endorsements "promulgated,
9 approved, or adopted" by the commissioner of insurance
10 under V.T.I.C. Article 5.06, revised in this
11 subchapter. The revised law omits "promulgated" as
12 unnecessary. Article 5.06 authorizes the commissioner
13 to adopt or approve forms and endorsements, but does
14 not authorize the commissioner to promulgate forms or
15 endorsements.

16 (2) Section (12)(b), V.T.I.C. Article 5.06,
17 refers to "the effective date of S.B. No. 14, [Chapter
18 206,] Acts of the 78th Legislature, Regular Session,
19 2003." That act had various effective dates. The
20 revised law substitutes a reference to "June 11,
21 2003," for the quoted language because the general
22 effective date of Chapter 206 was June 11, 2003.
23 Furthermore, Article 5.06 was amended by Article 21 of
24 Chapter 206, and the effective date of that article was
25 also June 11, 2003.

26 Revised Law

27 Sec. 1952.053. WITHDRAWAL OF APPROVAL. The commissioner
28 may, after notice and hearing, withdraw the commissioner's approval
29 of a policy or endorsement form that was approved by the
30 commissioner under Article 5.06. (V.T.I.C. Art. 5.06, Sec. (8).)

31 Source Law

32 (8) The Board may withdraw its approval of a
33 policy or endorsement form at any time, after notice
34 and hearing.

35 Revisor's Note

36 (1) Section (8), V.T.I.C. Article 5.06, refers
37 to the "Board," meaning the Board of Insurance

Commissioners. Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Throughout this chapter, references to the "Board" have been changed appropriately.

(2) Section (8), V.T.I.C. Article 5.06, provides that the "Board," meaning the commissioner of insurance for the reason stated in Revisor's Note (1) to this section, may withdraw the board's approval of a policy or endorsement form "at any time, after notice and hearing." The revised law omits "at any time" as unnecessary and misleading. A grant of power to the commissioner, absent any language limiting the exercise of the power, implies that the commissioner may exercise the power at appropriate times. "At any time" is misleading because it contradicts the source law's requirement of notice and hearing, which acts as a restriction on the time at which the commissioner can act.

Revised Law

Sec. 1952.054. REQUIRED DISCLOSURES REGARDING SHORT-TERM POLICIES. (a) An insurance policy or other document evidencing proof of purchase of a personal automobile insurance policy written for a term of less than 30 days may not be used to obtain an original or renewal driver's license, an automobile registration or license plates, or a motor vehicle inspection certificate. An insurance policy or other document described by this subsection must contain the following statement:

1 TEXAS LAW PROHIBITS USE OF THIS DOCUMENT TO OBTAIN A
2 MOTOR VEHICLE INSPECTION CERTIFICATE, AN ORIGINAL OR
3 RENEWAL DRIVER'S LICENSE, OR AN AUTOMOBILE
4 REGISTRATION OR LICENSE PLATES.

5 (b) Before accepting any premium or fee for a personal
6 automobile insurance policy or binder for a term of less than 30
7 days, an agent or insurer must make the following written
8 disclosure to the applicant or insured:

9 TEXAS LAW PROHIBITS USE OF THIS POLICY OR BINDER TO
10 OBTAIN A MOTOR VEHICLE INSPECTION CERTIFICATE, AN
11 ORIGINAL OR RENEWAL DRIVER'S LICENSE, OR AN AUTOMOBILE
12 REGISTRATION OR LICENSE PLATES.

13 (V.T.I.C. Art. 5.06, Secs. (9) (part), (10) (part).)

14 Source Law

15 (9) An insurance policy or other document
16 evidencing proof of purchase of a personal automobile
17 insurance policy written for a term of less than 30
18 days . . . may not be used to obtain an original or
19 renewal driver's license, an automobile registration
20 or license plates, or a motor vehicle inspection
21 certificate and must contain a statement as follows:
22 "TEXAS LAW PROHIBITS USE OF THIS DOCUMENT TO OBTAIN A
23 MOTOR VEHICLE INSPECTION CERTIFICATE, AN ORIGINAL OR
24 RENEWAL DRIVER'S LICENSE, OR AN AUTOMOBILE
25 REGISTRATION OR LICENSE PLATES."

26 (10) Before accepting any premium or fee for a
27 personal automobile insurance policy or binder for a
28 term of less than 30 days . . . an agent or insurer
29 must make the following written disclosure to the
30 applicant or insured:

31 "TEXAS LAW PROHIBITS USE OF THIS POLICY OR BINDER TO
32 OBTAIN A MOTOR VEHICLE INSPECTION CERTIFICATE, AN
33 ORIGINAL OR RENEWAL DRIVER'S LICENSE, OR AN AUTOMOBILE
34 REGISTRATION OR LICENSE PLATES."

35 Revisor's Note

36 Section (11), V.T.I.C. Article 5.06, defines
37 "time-based rating plan" and "mile-based rating plan"
38 to have the meanings assigned by V.T.I.C. Article
39 5.01-4. Sections (9) and (10), Article 5.06, refer to
40 policy premiums computed on a time-based rating plan
41 and a mile-based rating plan. The revised law omits
42 Section (11) and the provisions of Sections (9) and
43 (10) relating to both types of rating plans because the

1 plans no longer exist. V.T.I.C. Article 5.01-4, which
2 created time-based rating plans and mile-based rating
3 plans and authorized the use of those rating plans,
4 expired on September 1, 2005. The omitted law reads:

5 (9) [An insurance policy or other
6 document evidencing proof of purchase of a
7 personal automobile insurance policy
8 written for a term of less than 30 days] if
9 the policy premium is computed using a
10 time-based rating plan, or written for less
11 than 1,000 miles if the policy premium is
12 computed using a mile-based rating plan,
13

14 (10) [Before accepting any premium or
15 fee for a personal automobile insurance
16 policy or binder for a term of less than 30
17 days] if the policy premium is computed
18 using a time-based rating plan, or written
19 for less than 1,000 miles if the policy
20 premium is computed using a mile-based
21 rating plan,

22 (11) In this article, the terms
23 "time-based rating plan" and "mile-based
24 rating plan" have the meanings assigned by
25 Article 5.01-4 of this code.

26 Revised Law

27 Sec. 1952.055. CERTIFICATE OF INSURANCE AS SUBSTITUTE FOR
28 INSURANCE POLICY. (a) An insurer that complies with applicable
29 requirements may issue and deliver a certificate of insurance as a
30 substitute for issuing and delivering an insurance policy adopted
31 or approved by the commissioner. The certificate must:

32 (1) be in the form prescribed by the commissioner; and

33 (2) refer to and identify the policy form for which the
34 certificate is substituted.

35 (b) A certificate under this section represents the
36 insurance policy and, when issued, is evidence that the certificate
37 holder is insured under the identified policy form. The
38 certificate is subject to the same limitations, conditions,
39 coverages, selection of options, and other provisions provided in
40 the policy, and the certificate must show and adequately reference
41 that policy information. The certificate or subsequent attachments
42 to the certificate must refer to all endorsements to the policy.

43 (c) A certificate under this section must be executed in the
44 same manner as though an insurance policy were issued. If an

1 insurer substitutes a certificate for a policy, the insurer shall
2 simultaneously provide the insured receiving the certificate with
3 an outline of coverages in the form and content approved by the
4 commissioner. At the insured's request, the insurer shall provide
5 the insured with a copy of the policy.

6 (d) The commissioner may adopt rules necessary to implement
7 this section, including a rule limiting the application of this
8 section to private passenger automobile insurance policies.
9 (V.T.I.C. Art. 5.06, Secs. (5), (6).)

10 Source Law

11 (5) An insurer, if in compliance with applicable
12 requirements and conditions, may issue and deliver a
13 certificate of insurance as a substitute for the
14 entire policy of insurance. The certificate of
15 insurance shall make reference to and identify the
16 policy form adopted or approved by the Board for which
17 the substitution of certificate is made. The
18 certificate shall be in such form as is prescribed by
19 the Board. The certificate will represent the policy
20 of insurance, and when issued, shall be evidence that
21 the certificate holder is insured under the identified
22 policy form. The certificate is subject to the same
23 limitations, conditions, coverages, selection of
24 options, and other provisions of the policy as are
25 provided in the policy, and that insurance policy
26 information is to be shown on and adequately
27 referenced by the certificate of insurance issued by
28 the insurer to the insured. Reference shall be made in
29 the certificate, or in subsequent attachments, to all
30 endorsements to the policy of insurance. The
31 certificate shall be executed in the same manner as
32 though a policy were issued. When the certificate is
33 substituted for the policy of insurance by an insurer,
34 the insurer shall simultaneously furnish to the
35 insured receiving the certificate an "outline of
36 coverages", the form and content of which has been
37 approved by the Board. At the request of an insured at
38 any time, an insurer which has substituted a
39 certificate for a policy of insurance shall provide a
40 copy of the policy.

41 (6) The Board may promulgate such rules as are
42 necessary to implement the certificate in lieu of
43 policy provision herein, including a rule limiting the
44 application thereof to private passenger automobile
45 policies.

46 Revisor's Note

47 (1) Section (5), V.T.I.C. Article 5.06, refers
48 to "requirements and conditions" applicable to an
49 insurer. The revised law omits "conditions" because,
50 in this context, "conditions" is included within the
51 meaning of "requirements."

1 (2) Section (5), V.T.I.C. Article 5.06,
2 requires an insurer that has substituted a certificate
3 of insurance for an insurance policy to provide the
4 insured with a copy of the policy "[a]t the request of
5 [the] insured at any time." The revised law omits "at
6 any time" as unnecessary. The grant of a right to an
7 insured, absent any language limiting the exercise of
8 the right, implies that the insured may exercise the
9 right at any time.

10 Revised Law

11 Sec. 1952.056. REQUIRED PROVISION: COVERAGE FOR CERTAIN
12 SPOUSES. A personal automobile insurance policy or any similar
13 policy form adopted or approved by the commissioner under Article
14 5.06 or filed under Subchapter B, Chapter 2301, that covers
15 liability arising out of ownership, maintenance, or use of a motor
16 vehicle of a spouse who is otherwise insured by the policy must
17 contain a provision to continue coverage for the spouse during a
18 period of separation in contemplation of divorce. (V.T.I.C.
19 Art. 5.06-6.)

20 Source Law

21 Art. 5.06-6. A personal automobile policy or
22 any similar policy form adopted or approved by the
23 commissioner under Article 5.06 of this code or filed
24 under Article 5.145 of this code that covers liability
25 arising out of ownership, maintenance, or use of a
26 motor vehicle of a spouse, who is otherwise insured by
27 the policy, shall contain a provision to continue
28 coverage for the spouse during a period of separation
29 in contemplation of divorce.

30 Revisor's Note

31 V.T.I.C. Article 5.06-6 refers to a policy form
32 filed under V.T.I.C. Article 5.145. The relevant
33 provisions of that article are revised as Subchapter
34 B, Chapter 2301, of this code. The revised law is
35 drafted accordingly.

36 Revised Law

37 Sec. 1952.057. PROHIBITED PROVISION: PAYMENT ON CONVICTION
38 FOR DRUG OFFENSE. (a) An insurer may not deliver or issue for

1 delivery in this state an automobile insurance policy that provides
2 payment on final conviction of the named insured for loss for a
3 covered motor vehicle seized by federal or state law enforcement
4 officers as evidence in a case against the named insured under
5 Chapter 481, Health and Safety Code, or under the federal
6 Controlled Substances Act (21 U.S.C. Section 801 et seq.).

7 (b) For purposes of this section, a named insured for:

8 (1) an individual automobile insurance policy is the
9 person named on the declaration page of the policy and the person's
10 spouse; and

11 (2) an automobile insurance policy other than an
12 individual policy is the company or corporation named on the
13 declaration page of the policy and any officer, director, or
14 shareholder of that company or corporation. (V.T.I.C.
15 Art. 5.06-5.)

16 Source Law

17 Art. 5.06-5. (a) A motor vehicle insurance
18 policy delivered or issued for delivery in this state
19 may not provide payment on final conviction of the
20 named insured for loss for a covered motor vehicle that
21 is seized by federal or state law enforcement officers
22 as evidence in a case against the named insured under
23 Chapter 481, Health and Safety Code or the federal
24 Controlled Substances Act, 21 U.S.C. Section 801 et
25 seq. For the purpose of this section a named insured
26 shall be the person named on the declaration page of an
27 automobile insurance policy and his or her spouse if
28 the policy is written on an individual. If a policy is
29 other than an individual policy, a named insured shall
30 be the company or corporation named on the declaration
31 page of an automobile insurance policy and any
32 officer, director, or stockholder of that company or
33 corporation.

34 (b) An insurer may not deliver or issue for
35 delivery in this state a motor vehicle insurance
36 policy that provides payment on final conviction of
37 the named insured for loss for a covered motor vehicle
38 that is seized by federal or state law enforcement
39 officers as evidence in a case against the named
40 insured under Chapter 481, Health and Safety Code or
41 the federal Controlled Substances Act, 21 U.S.C.
42 Section 801 et seq.

43 Revised Law

44 Sec. 1952.058. LOSS CONTROL INFORMATION AND SERVICES
45 REQUIRED. (a) An insurer must provide loss control information as
46 a prerequisite to writing commercial automobile liability

1 insurance in this state.

2 (b) The insurer shall provide to the insurer's
3 policyholders loss control information reasonably commensurate
4 with the risks, exposures, and experience of the insured's
5 business. To provide loss control information or services, the
6 insurer may:

- 7 (1) employ qualified personnel;
8 (2) retain qualified independent contractors;
9 (3) contract with the policyholder to provide
10 qualified loss control personnel and services; or
11 (4) use a combination of methods described by this
12 subsection.

13 (c) If there is evidence that an insurer is not providing
14 reasonable loss control information or is not using that
15 information in a reasonable manner to reduce losses, the
16 commissioner shall order a hearing to determine whether the insurer
17 is in compliance with this section. If the commissioner determines
18 that the insurer is not in compliance, the commissioner may impose
19 any sanction authorized by Chapter 82.

20 (d) An insurer or an agent or employee of the insurer is not
21 liable, and a cause of action does not arise against the insurer,
22 agent, or employee, for any accident based on the allegation that
23 the accident was caused or could have been prevented by a program,
24 information, inspection, or other activity or service undertaken by
25 the insurer for the prevention of accidents in connection with
26 operations of the insured. The immunity provided by this
27 subsection does not affect the liability of an insurer for
28 compensation or as otherwise provided in an insurance policy.

29 (e) Loss control information an insurer provides to an
30 insured under this section is not subject to discovery and is not
31 admissible as evidence in any civil proceeding.

32 (f) The commissioner, after holding a public hearing on the
33 proposed rules, may adopt reasonable rules for the enforcement of
34 this section. (V.T.I.C. Art. 5.06-4.)

Source Law

Art. 5.06-4. (a) Any insurer desiring to write commercial automobile liability insurance in this state must provide loss control information as a prerequisite for writing that insurance.

(b) The insurer shall provide loss control information to its policyholders reasonably commensurate with the risks and exposures and experience of the insured's business. To provide this information or services, the insurer may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of the methods provided by this section.

(c) If there is evidence that reasonable loss control information is not being provided by the insurer or is not being used by the insurer in a reasonable manner to reduce losses, the State Board of Insurance shall order a hearing to determine if the insurer is not in compliance with this article. If it is determined that the insurer is not in compliance, the board may impose any of the sanctions authorized by Section 7, Article 1.10, of this code.

(d) The State Board of Insurance may promulgate reasonable rules and regulations for the enforcement of this article after holding a public hearing on the proposed rules and regulations.

(e) An insurer or its agents, servants, or employees are not liable for, and no cause of action arises with respect to, any accident based on the allegation that the accident was caused or could have been prevented by a program, information, inspection, or other activity or service undertaken by the insurer for the prevention of accidents in connection with operations of its insured. However, this immunity does not affect the liability of an insurer for compensation or as otherwise provided in a policy of insurance.

(f) Loss control information provided by an insurer to an insured pursuant to this article is not subject to discovery or admissible in any civil proceeding as evidence.

Revisor's Note

(1) Section (b), V.T.I.C. Article 5.06-4, refers to "qualified accident prevention personnel and services." The revised law substitutes "qualified loss control personnel and services" for "qualified accident prevention personnel and services" because "qualified loss control personnel and services" more accurately describes the type of personnel and services provided with respect to automobile insurance.

(2) Section (d), V.T.I.C. Article 5.06-4,

1 authorizes the State Board of Insurance to adopt
2 certain "rules and regulations" after holding a public
3 hearing on the proposed "rules and regulations." For
4 the reason stated in Revisor's Note (1) to Section
5 1952.053, the commissioner of insurance has the
6 authority formerly granted to the board. The revised
7 law omits as unnecessary the references to
8 "regulations" because a rule is defined under Section
9 311.005(5), Government Code (Code Construction Act),
10 to include a regulation, and that definition applies
11 to the revised law.

12 [Sections 1952.059-1952.100 reserved for expansion]

13 SUBCHAPTER C. UNINSURED OR UNDERINSURED MOTORIST COVERAGE

14 Revised Law

15 Sec. 1952.101. UNINSURED OR UNDERINSURED MOTORIST COVERAGE
16 REQUIRED. (a) In this section, "uninsured or underinsured
17 motorist coverage" means the provisions of an automobile liability
18 insurance policy that provide for coverage in at least the limits
19 prescribed by Chapter 601, Transportation Code, that protects
20 insureds who are legally entitled to recover from owners or
21 operators of uninsured or underinsured motor vehicles damages for
22 bodily injury, sickness, disease, or death, or property damage
23 resulting from the ownership, maintenance, or use of any motor
24 vehicle.

25 (b) An insurer may not deliver or issue for delivery in this
26 state an automobile liability insurance policy, including a policy
27 provided through the Texas Automobile Insurance Plan Association
28 under Chapter 2151, that covers liability arising out of the
29 ownership, maintenance, or use of any motor vehicle unless the
30 insurer provides uninsured or underinsured motorist coverage in the
31 policy or supplemental to the policy.

32 (c) The coverage required by this subchapter does not apply
33 if any insured named in the insurance policy rejects the coverage in
34 writing. Unless the named insured requests in writing the coverage

1 required by this subchapter, the insurer is not required to provide
2 that coverage in or supplemental to a renewal insurance policy if
3 the named insured rejected the coverage in connection with an
4 insurance policy previously issued to the insured by the same
5 insurer or by an affiliated insurer. (V.T.I.C. Art. 5.06-1, Sec.
6 (1).)

7 Source Law

8 Art. 5.06-1. (1) No automobile liability
9 insurance (including insurance issued pursuant to an
10 Assigned Risk Plan established under authority of
11 Section 35 of the Texas Motor Vehicle
12 Safety-Responsibility Act), covering liability
13 arising out of the ownership, maintenance, or use of
14 any motor vehicle shall be delivered or issued for
15 delivery in this state unless coverage is provided
16 therein or supplemental thereto, in at least the
17 limits described in the Texas Motor Vehicle
18 Safety-Responsibility Act, under provisions
19 prescribed by the Board, for the protection of persons
20 insured thereunder who are legally entitled to recover
21 damages from owners or operators of uninsured or
22 underinsured motor vehicles because of bodily injury,
23 sickness, or disease, including death, or property
24 damage resulting therefrom. The coverages required
25 under this Article shall not be applicable where any
26 insured named in the policy shall reject the coverage
27 in writing; provided that unless the named insured
28 thereafter requests such coverage in writing, such
29 coverage need not be provided in or supplemental to a
30 renewal policy where the named insured has rejected
31 the coverage in connection with a policy previously
32 issued to him by the same insurer or by an affiliated
33 insurer.

34 Revisor's Note

35 (1) Section (1), V.T.I.C. Article 5.06-1,
36 refers to "the Texas Motor Vehicle
37 Safety-Responsibility Act" and to an "Assigned Risk
38 Plan established under authority of Section 35 of the
39 Texas Motor Vehicle Safety-Responsibility Act." That
40 act, formerly Article 6701h, Vernon's Texas Civil
41 Statutes, was codified in 1995 as Chapter 601,
42 Transportation Code. Section 35, Article 6701h,
43 provided for insurers to establish an "administrative
44 agency" to administer an assigned risk plan to provide
45 motor vehicle liability insurance to persons "unable
46 to secure it through ordinary methods." Section 35 was

1 repealed by Section 14.08, Chapter 685, Acts of the
2 73rd Legislature, Regular Session, 1993. Section
3 14.03 of that act added V.T.I.C. Article 21.81, which
4 created the Texas Automobile Insurance Plan
5 Association. The association's primary duty is to
6 provide eligible persons with insurance required under
7 the Texas Motor Vehicle Safety-Responsibility Act.
8 Section 14.09(b) of that act required the
9 administrative agency created under Section 35,
10 Article 6701h, to transfer its assets and obligations
11 to the Texas Automobile Insurance Plan Association.
12 Throughout this chapter, the revised law is drafted
13 accordingly.

14 (2) Section (1), V.T.I.C. Article 5.06-1,
15 prohibits an insurer from delivering or issuing for
16 delivery an automobile insurance policy unless the
17 insurer provides coverage "under provisions
18 prescribed by the Board," meaning the commissioner of
19 insurance for the reasons stated in Revisor's Note (1)
20 to Section 1952.053. The revised law omits the quoted
21 phrase as unnecessary and misleading for the reasons
22 that follow. Before June 11, 2003, the commissioner
23 adopted and approved policy forms for automobile
24 insurance under V.T.I.C. Article 5.06. In 2003, the
25 legislature enacted Chapter 206, Acts of the 78th
26 Legislature, Regular Session, which provides that
27 policy forms for various kinds of insurance, including
28 automobile insurance, are now governed by V.T.I.C.
29 Article 5.13-2. However, under Section 2(b), V.T.I.C.
30 Article 5.145, an insurer is authorized to continue
31 using policy forms previously approved or adopted
32 under Article 5.06. Therefore, under the current
33 regulatory system for policy forms for automobile
34 insurance, an insurer is authorized to use policy

1 forms that are subject to Article 5.13-2 or to Article
2 5.06. Those articles by their terms prescribe the
3 requirements for the policy forms that are subject to
4 them, and those requirements apply to the provisions
5 for uninsured or underinsured motorist coverage under
6 Article 5.06-1 contained in the forms without a
7 statement to that effect.

8 Revised Law

9 Sec. 1952.102. UNINSURED MOTOR VEHICLE. (a) For purposes
10 of the coverage required by this subchapter, "uninsured motor
11 vehicle," subject to the terms of the coverage, is considered to
12 include an insured motor vehicle as to which the insurer providing
13 liability insurance is unable because of insolvency to make payment
14 with respect to the legal liability of the insured within the limits
15 specified in the insurance.

16 (b) The commissioner may, in the policy forms filed under
17 Subchapter B, Chapter 2301, allow "uninsured motor vehicle" to be
18 defined or, in policy forms adopted under Article 5.06, define
19 "uninsured motor vehicle," to exclude certain motor vehicles whose
20 operators are in fact uninsured. (V.T.I.C. Art. 5.06-1, Secs.
21 (2)(a), (c).)

22 Source Law

23 (2) For the purpose of these coverages: (a) the
24 term "uninsured motor vehicle" shall, subject to the
25 terms and conditions of such coverage, be deemed to
26 include an insured motor vehicle where the liability
27 insurer thereof is unable to make payment with respect
28 to the legal liability of its insured within the limits
29 specified therein because of insolvency.

30 (c) The commissioner may, in the policy
31 forms adopted under Article 5.06 of this code, define
32 "uninsured motor vehicle" to exclude certain motor
33 vehicles whose operators are in fact uninsured. The
34 commissioner may in the policy forms filed under
35 Article 5.145 of this code allow the term "uninsured
36 motor vehicle" to be defined to exclude certain motor
37 vehicles whose operators are in fact uninsured.

38 Revisor's Note

39 Section (2)(a), V.T.I.C. Article 5.06-1, refers
40 to "terms and conditions" of uninsured motor vehicle

1 coverage. Throughout this chapter, the revised law
2 omits "conditions" as unnecessary because
3 "conditions" is included within the meaning of
4 "terms."

5 Revised Law

6 Sec. 1952.103. UNDERINSURED MOTOR VEHICLE. For purposes
7 of the coverage required by this subchapter, "underinsured motor
8 vehicle" means an insured motor vehicle on which there is
9 collectible liability insurance coverage with limits of liability
10 for the owner or operator that were originally lower than, or have
11 been reduced by payment of claims arising from the same accident to,
12 an amount less than the limit of liability stated in the
13 underinsured coverage of the insured's policy. (V.T.I.C.
14 Art. 5.06-1, Sec. (2)(b).)

15 Source Law

16 (2) For the purpose of these coverages:

17 (b) The term "underinsured motor vehicle"
18 means an insured motor vehicle on which there is valid
19 and collectible liability insurance coverage with
20 limits of liability for the owner or operator which
21 were originally lower than, or have been reduced by
22 payment of claims arising from the same accident to, an
23 amount less than the limit of liability stated in the
24 underinsured coverage of the insured's policy.

25 Revisor's Note

26 Section (2)(b), V.T.I.C. Article 5.06-1, refers
27 to "valid and collectible" liability insurance
28 coverage. The revised law omits the reference to
29 "valid" as unnecessary because a policy that is not
30 valid is not collectible.

31 Revised Law

32 Sec. 1952.104. REQUIRED PROVISIONS RELATING TO UNINSURED OR
33 UNDERINSURED MOTORIST COVERAGE. The portion of a policy form
34 adopted under Article 5.06 or filed as provided by Subchapter B,
35 Chapter 2301, to provide coverage under this subchapter must:

36 (1) provide that, regardless of the number of persons
37 insured, policies or bonds applicable, vehicles involved, or claims

1 made, the total aggregate limit of liability to any one person who
2 sustains bodily injury or property damage as the result of a single
3 occurrence may not exceed the limit of liability for those
4 coverages as stated in the insurance policy and that the total
5 aggregate limit of liability to all claimants, if more than one, may
6 not exceed the total limit of liability per occurrence as stated in
7 the policy;

8 (2) provide for the exclusion of the recovery of
9 damages for bodily injury or property damage, or both, resulting
10 from the intentional acts of the insured; and

11 (3) require that, for the insured to recover under the
12 uninsured motorist coverage if the owner or operator of any motor
13 vehicle that causes bodily injury or property damage to the insured
14 is unknown, actual physical contact must have occurred between the
15 motor vehicle owned or operated by the unknown person and the person
16 or property of the insured. (V.T.I.C. Art. 5.06-1, Sec. (2)(d).)

17 Source Law

18 (d) The portion of a policy form adopted
19 under Article 5.06 of this code or filed under Article
20 5.145 of this code to provide coverage under this
21 article shall include provisions that, regardless of
22 the number of persons insured, policies or bonds
23 applicable, vehicles involved, or claims made, the
24 total aggregate limit of liability to any one person
25 who sustains bodily injury or property damage as the
26 result of any one occurrence shall not exceed the limit
27 of liability for these coverages as stated in the
28 policy and the total aggregate limit of liability to
29 all claimants, if more than one, shall not exceed the
30 total limit of liability per occurrence as stated in
31 the policy; and shall provide for the exclusion of the
32 recovery of damages for bodily injury or property
33 damage or both resulting from the intentional acts of
34 the insured. The portion of a policy form adopted
35 under Article 5.06 of this code or filed under Article
36 5.145 of this code to provide coverage under this
37 article shall require that in order for the insured to
38 recover under the uninsured motorist coverages where
39 the owner or operator of any motor vehicle which causes
40 bodily injury or property damage to the insured is
41 unknown, actual physical contact must have occurred
42 between the motor vehicle owned or operated by such
43 unknown person and the person or property of the
44 insured.

45 Revised Law

46 Sec. 1952.105. LIABILITY LIMITS. (a) The limits of
47 liability for bodily injury, sickness, disease, or death must be

1 offered to an insured in the amounts desired by the insured, but not
2 in amounts greater than the limits of liability specified in the
3 bodily injury liability provisions of the insured's policy.

4 (b) Subject to a deductible amount of \$250, coverage for
5 property damage must be offered to an insured in the amounts desired
6 by the insured, but not in amounts greater than the limits of
7 liability specified in the property damage liability provisions of
8 the insured's policy.

9 (c) Notwithstanding Subsections (a) and (b), amounts of
10 liability limits for bodily injury, sickness, disease, or death and
11 amounts for coverage for property damage may not be offered in
12 amounts less than those prescribed by Chapter 601, Transportation
13 Code. (V.T.I.C. Art. 5.06-1, Secs. (3), (4)(a).)

14 Source Law

15 (3) The limits of liability for bodily injury,
16 sickness, or disease, including death, shall be
17 offered to the insured in amounts not less than those
18 prescribed in the Texas Motor Vehicle
19 Safety-Responsibility Act and such higher available
20 limits as may be desired by the insured, but not
21 greater than the limits of liability specified in the
22 bodily injury liability provisions of the insured's
23 policy.

24 (4)(a) Coverage for property damage shall be
25 offered to the insured in amounts not less than those
26 prescribed in the Texas Motor Vehicle
27 Safety-Responsibility Act and such higher available
28 limits as may be desired by the insured, but not
29 greater than limits of liability specified in the
30 property damage liability provisions of the insured's
31 policy, subject to a deductible amount of \$250.

32 Revised Law

33 Sec. 1952.106. RECOVERY UNDER UNDERINSURED MOTORIST
34 COVERAGE. Underinsured motorist coverage must provide for payment
35 to the insured of all amounts that the insured is legally entitled
36 to recover as damages from owners or operators of underinsured
37 motor vehicles because of bodily injury or property damage, not to
38 exceed the limit specified in the insurance policy, and reduced by
39 the amount recovered or recoverable from the insurer of the
40 underinsured motor vehicle. (V.T.I.C. Art. 5.06-1, Sec. (5).)

41 Source Law

42 (5) The underinsured motorist coverage shall

1 provide for payment to the insured of all sums which he
2 shall be legally entitled to recover as damages from
3 owners or operators of underinsured motor vehicles
4 because of bodily injury or property damage in an
5 amount up to the limit specified in the policy, reduced
6 by the amount recovered or recoverable from the
7 insurer of the underinsured motor vehicle.

8 Revised Law

9 Sec. 1952.107. RECOVERY UNDER COLLISION OR COMBINED
10 COVERAGE. (a) An insured who has collision coverage and
11 uninsured or underinsured property damage liability coverage may
12 recover under the coverage the insured chooses.

13 (b) If neither the collision coverage or the uninsured or
14 underinsured property damage liability coverage is sufficient
15 alone to cover all damage resulting from a single occurrence, the
16 insured may recover under both coverages. If recovering under both
17 coverages, the insured shall designate one coverage as the primary
18 coverage and pay the deductible applicable to that coverage. The
19 primary coverage must be exhausted before any recovery is made
20 under the secondary coverage.

21 (c) If both the primary and secondary coverages are used to
22 pay damages from a single occurrence, the insured may not be
23 required to pay the deductible applicable to the secondary coverage
24 when the amount of the deductible otherwise applicable to the
25 secondary coverage is the same as or less than the amount of the
26 deductible applicable to the primary coverage. If both coverages
27 are used to pay damages from a single occurrence and the amount of
28 the deductible otherwise applicable to the secondary coverage is
29 greater than the amount of the deductible applicable to the primary
30 coverage, the insured shall pay the difference between the amount
31 of the two deductibles with respect to the secondary coverage.

32 (d) The insured may not recover under both the primary and
33 secondary coverages more than the actual damages suffered.
34 (V.T.I.C. Art. 5.06-1, Sec. (4)(b).)

35 Source Law

36 (b) If the insured has collision coverage
37 and uninsured or underinsured property damage
38 liability coverage, the insured may recover under the
39 policy coverage chosen by the insured. In the event

1 neither coverage is sufficient alone to cover all
2 damage resulting from a single occurrence, the insured
3 may recover under both coverages. When recovering
4 under both coverages, the insured shall designate one
5 coverage as the primary coverage and pay the
6 deductible applicable to that coverage. The primary
7 coverage must be exhausted before any recovery is made
8 under the secondary coverage. If both coverages are
9 utilized in the payment of damages from a single
10 occurrence, the insured shall not be required to pay
11 the deductible applicable to the secondary coverage
12 when the amount of the deductible otherwise applicable
13 to the secondary coverage is the same as or less than
14 the amount of the deductible applicable to the primary
15 coverage. If both coverages are utilized in the
16 payment of damages from a single occurrence and the
17 amount of the deductible otherwise applicable to the
18 secondary coverage is greater than the amount of the
19 deductible applicable to the primary coverage, the
20 insured shall be required to pay in respect of the
21 secondary coverage only the difference between the
22 amount of the two deductibles. In no event shall the
23 insured recover under both coverages more than the
24 actual damages suffered.

25 Revised Law

26 Sec. 1952.108. INSURER'S RIGHT OF RECOVERY. (a) An insurer
27 that makes a payment to any person under any coverage required by
28 this subchapter is subject to the terms of that coverage and, to the
29 extent of the payment, is entitled to the proceeds of any settlement
30 or judgment resulting from the exercise of any right of recovery of
31 the person to whom the payment is made against any person or
32 organization legally responsible for the bodily injury, sickness,
33 disease, or death for which the payment is made, including the
34 proceeds recoverable from the assets of an insolvent insurer.

35 (b) If, under an insurance policy issued under this
36 subchapter, an insurer makes a payment as a result of the insolvency
37 of another insurer:

38 (1) the insolvent insurer's insured shall be given
39 credit to the extent of the paying insurer's payment in any judgment
40 obtained against the insured with respect to the insured's legal
41 liability for damages described by Subsection (a); and

42 (2) subject to Subchapter F, Chapter 462, the paying
43 insurer has the right to proceed directly against the insolvent
44 insurer or that insurer's receiver, and in pursuing that right the
45 paying insurer has any rights that the insolvent insurer's insured
46 might otherwise have had if the insured had made the payment.

1 (V.T.I.C. Art. 5.06-1, Sec. (6).)

2 Source Law

3 (6) In the event of payment to any person under
4 any coverage required by this Section and subject to
5 the terms and conditions of such coverage, the insurer
6 making such payment shall, to the extent thereof, be
7 entitled to the proceeds of any settlement or judgment
8 resulting from the exercise of any rights of recovery
9 of such person against any person or organization
10 legally responsible for the bodily injury, sickness or
11 disease, or death for which such payment is made,
12 including the proceeds recoverable from the assets of
13 the insolvent insurer; provided, however, whenever an
14 insurer shall make payment under a policy of insurance
15 issued pursuant to this Act, which payment is
16 occasioned by the insolvency of an insurer, the
17 insured of said insolvent insurer shall be given
18 credit in any judgment obtained against him, with
19 respect to his legal liability for such damages, to the
20 extent of such payment, but, subject to Section 12 of
21 Article 21.28-C of this code, such paying insurer
22 shall have the right to proceed directly against the
23 insolvent insurer or its receiver, and in pursuance of
24 such right such paying insurer shall possess any
25 rights which the insured of the insolvent company
26 might otherwise have had if the insured of the
27 insolvent insurer had made the payment.

28 Revised Law

29 Sec. 1952.109. BURDEN OF PROOF IN DISPUTE. The insurer has
30 the burden of proof in a dispute as to whether a motor vehicle is
31 uninsured. (V.T.I.C. Art. 5.06-1, Sec. (7).)

32 Source Law

33 (7) If a dispute exists as to whether a motor
34 vehicle is uninsured, the burden of proof as to that
35 issue shall be upon the insurer.

36 Revised Law

37 Sec. 1952.110. VENUE. Notwithstanding Section 15.032,
38 Civil Practice and Remedies Code, an action against an insurer in
39 relation to the coverage provided under this subchapter, including
40 an action to enforce that coverage, may be brought only in the
41 county in which:

42 (1) the policyholder or beneficiary instituting the
43 action resided at the time of the accident involving the uninsured
44 or underinsured motor vehicle; or

45 (2) the accident occurred. (V.T.I.C. Art. 5.06-1,
46 Sec. (8).)

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(a) in the county in which the policyholder or beneficiary instituting the suit resided at the time of the accident; or

(b) in the county in which the accident involving the uninsured or underinsured motor vehicle occurred.

(b) in the county in which the accident involving the uninsured or underinsured motor vehicle occurred.

SUBCHAPTER D. PERSONAL INJURY PROTECTION COVERAGE

Sec. 1952.151. PERSONAL INJURY PROTECTION. "Personal
y protection" consists of provisions of an automobile
ity insurance policy that provide for payment to the named
ed in the policy, members of the insured's household, and any
rized operator or passenger of the named insured's motor
le, including a guest occupant, of all reasonable expenses

(1) arise from an accident;

(2) are incurred not later than the third anniversary

(A) necessary medical, surgical, x-ray, or dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing, or funeral services;

(B) in the case of an income producer,

(C) in the case of a person injured in the

(b) "Personal injury protection" consists of provisions of a motor vehicle liability policy which

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1 provide for payment to the named insured in the motor
2 vehicle liability policy and members of the insured's
3 household, any authorized operator or passenger of the
4 named insured's motor vehicle including a guest
5 occupant, . . . of all reasonable expenses arising
6 from the accident and incurred within three years from
7 the date thereof for necessary medical, surgical,
8 X-ray and dental services, including prosthetic
9 devices, and necessary ambulance, hospital,
10 professional nursing and funeral services, and in the
11 case of an income producer, payment of benefits for
12 loss of income as the result of the accident; and where
13 the person injured in the accident was not an income or
14 wage producer at the time of the accident, payments of
15 benefits must be made in reimbursement of necessary
16 and reasonable expenses incurred for essential
17 services ordinarily performed by the injured person
18 for care and maintenance of the family or family
19 household. . . .

20 Revised Law

21 Sec. 1952.152. PERSONAL INJURY PROTECTION COVERAGE
22 REQUIRED. (a) An insurer may not deliver or issue for delivery in
23 this state an automobile liability insurance policy, including a
24 policy provided through the Texas Automobile Insurance Plan
25 Association under Chapter 2151, that covers liability arising out
26 of the ownership, maintenance, or use of any motor vehicle unless
27 the insurer provides personal injury protection coverage in the
28 policy or supplemental to the policy.

29 (b) The coverage required by this subchapter does not apply
30 if any insured named in the insurance policy rejects the coverage in
31 writing. Unless the named insured requests in writing the coverage
32 required by this subchapter, the insurer is not required to provide
33 that coverage in or supplemental to a renewal insurance policy if
34 the named insured rejected the coverage in connection with an
35 insurance policy previously issued to the insured by the same
36 insurer or by an affiliated insurer. (V.T.I.C. Art. 5.06-3, Sec.
37 (a).)

38 Source Law

39 Art. 5.06-3. (a) No automobile liability
40 insurance policy, including insurance issued pursuant
41 to an assigned risk plan established under authority
42 of Section 35 of the Texas Motor Vehicle
43 Safety-Responsibility Act, covering liability arising
44 out of the ownership, maintenance, or use of any motor
45 vehicle shall be delivered or issued for delivery in
46 this state unless personal injury protection coverage
47 is provided therein or supplemental thereto. The
48 coverage required by this article shall not be

1 applicable if any insured named in the policy shall
2 reject the coverage in writing; provided, unless the
3 named insured thereafter requests such coverage in
4 writing, such coverage need not be provided in or
5 supplemental to a renewal policy if the named insured
6 has rejected the coverage in connection with a policy
7 previously issued to him by the same insurer or by an
8 affiliated insurer.

9 Revised Law

10 Sec. 1952.153. MAXIMUM REQUIRED AMOUNT OF PERSONAL INJURY
11 PROTECTION. This subchapter does not require an insurer to provide
12 personal injury protection coverage in an amount that exceeds
13 \$2,500 for all benefits, in the aggregate, for each person.
14 (V.T.I.C. Art. 5.06-3, Sec. (b) (part).)

15 Source Law

16 (b) . . . up to an amount of \$2,500 for each
17 such person for payment The personal injury
18 protection in this paragraph specified shall not
19 exceed \$2,500 for all benefits, in the aggregate, for
20 each person.

21 Revised Law

22 Sec. 1952.154. LOSS OF INCOME BENEFITS. An insurer
23 providing loss of income benefits under coverage required by this
24 subchapter may require that the insured, as a condition of
25 receiving those benefits, provide the insurer with reasonable
26 medical proof of the insured's injury causing loss of income.
27 (V.T.I.C. Art. 5.06-3, Sec. (b) (part).)

28 Source Law

29 (b) . . . The insurer providing loss of income
30 benefits may require, as a condition of receiving such
31 benefits, that the insured person furnish the insurer
32 reasonable medical proof of his injury causing loss of
33 income. . . .

34 Revised Law

35 Sec. 1952.155. BENEFITS PAYABLE WITHOUT REGARD TO FAULT OR
36 COLLATERAL SOURCE; EFFECT ON SUBROGATION. (a) The benefits under
37 coverage required by this subchapter are payable without regard to:

38 (1) the fault or nonfault of the named insured or
39 recipient in causing or contributing to the accident; and

40 (2) any collateral source of medical, hospital, or
41 wage continuation benefits.

42 (b) An insurer paying benefits under coverage required by

1 this subchapter does not have a right of subrogation or claim
2 against any other person or insurer to recover any benefits by
3 reason of the alleged fault of the other person in causing or
4 contributing to the accident. (V.T.I.C. Art. 5.06-3, Sec. (c).)

5 Source Law

6 (c) The benefits required by this Act shall be
7 payable without regard to the fault or non-fault of the
8 named insured or the recipient in causing or
9 contributing to the accident, and without regard to
10 any collateral source of medical, hospital, or wage
11 continuation benefits. An insurer paying benefits
12 pursuant to this Act shall have no right of subrogation
13 and no claim against any other person or insurer to
14 recover any such benefits by reason of the alleged
15 fault of such other person in causing or contributing
16 to the accident.

17 Revised Law

18 Sec. 1952.156. PAYMENT OF BENEFITS. (a) Subject to the
19 requirements of this section and Section 1952.157, an insurer shall
20 pay benefits under the coverage required by this subchapter
21 periodically as claims for those benefits arise, but not later than
22 the 30th day after the date the insurer receives satisfactory proof
23 of a claim.

24 (b) The coverage required by this subchapter may:

25 (1) prescribe a period of not less than six months
26 after the date of an accident within which the original proof of
27 loss with respect to a claim for benefits must be presented to the
28 insurer; and

29 (2) provide that an insurer may require reasonable
30 medical proof of an alleged recurrence of an injury for which an
31 original claim for benefits was made if a lapse occurs in the period
32 of total disability or in the medical treatment of an injured person
33 who:

34 (A) has received benefits under that coverage;
35 and

36 (B) subsequently claims additional benefits
37 based on the alleged recurrence.

38 (c) The aggregate benefits payable under the coverage
39 required by this subchapter to any person may not exceed the maximum

limits prescribed in the insurance policy. (V.T.I.C. Art. 5.06-3,
Sec. (d) (part).)

Source Law

(d) All payments of benefits prescribed under this Act shall be made periodically as the claims therefor arise and within thirty (30) days after satisfactory proof thereof is received by the insurer subject to the following limitations:

(1) The coverage described in this Act may prescribe a period of not less than six months after the date of accident within which the original proof of loss with respect to a claim for benefits must be presented to the insurer.

(2) The coverage described in this Act may provide that in any instance where a lapse occurs in the period of total disability or in the medical treatment of an injured person who has received benefits under such coverage and such person subsequently claims additional benefits based upon an alleged recurrence of the injury for which the original claim for benefits was made, the insurer may require reasonable medical proof of such alleged recurrence; provided, that in no event shall the aggregate benefits payable to any person exceed the maximum limits prescribed in the policy.

. . . .

Revised Law

Sec. 1952.157. ACTION FOR FAILURE TO PAY BENEFITS. (a) If the insurer fails to pay benefits under the coverage required by this subchapter when due, the person entitled to those benefits may bring an action in contract to recover the benefits.

(b) If the insurer is required to pay benefits described by Subsection (a), the person entitled to the benefits is entitled to recover reasonable attorney's fees, a penalty of 12 percent, and interest at the legal rate from the date those amounts became overdue. (V.T.I.C. Art. 5.06-3, Sec. (d) (part).)

Source Law

(d) [All payments of benefits prescribed under this Act shall be made periodically as the claims therefor arise and within thirty (30) days after satisfactory proof thereof is received by the insurer subject to the following limitations:]

. . . .

(3) In the event the insurer fails to pay such benefits when due, the person entitled to such benefits may bring an action in contract to recover the same; and, in the event the insurer is required to pay such benefits, the person entitled to such benefits shall be entitled to recover reasonable attorneys fees plus 12% penalty, plus interest thereon at the legal rate from the date such sums became overdue.

1 Revised Law

2 Sec. 1952.158. EXCLUSION OF BENEFITS. An insurer shall
3 exclude benefits to an insured or the insured's personal
4 representative under the coverage required by this subchapter if
5 the insured's conduct contributed to the injury the insured
6 sustained and that conduct:

7 (1) involved intentionally causing injury to the
8 insured; or

9 (2) occurred while committing a felony or while
10 seeking to elude lawful apprehension or arrest by a law enforcement
11 official. (V.T.I.C. Art. 5.06-3, Sec. (e).)

12 Source Law

13 (e) An insurer shall exclude benefits to any
14 insured, or his personal representative, under a
15 policy required by Section 1, when the insured's
16 conduct contributed to the injury he sustained in any
17 of the following ways:

18 (1) Causing injury to himself
19 intentionally.

20 (2) While in the commission of a felony, or
21 while seeking to elude lawful apprehension or arrest
22 by a law enforcement official.

23 Revisor's Note

24 Section (e), V.T.I.C. Article 5.06-3, refers to a
25 policy required by "Section 1." Neither Article
26 5.06-3 nor Section (e) contains a Section 1. It is
27 clear from the context of the source law that "Section
28 1" is referring to Section 1 of Chapter 52, Acts of the
29 63rd Legislature, Regular Session, 1973, which enacted
30 Article 5.06-3. The substance of Article 5.06-3 is
31 revised throughout this subchapter. Therefore, the
32 revised law substitutes a reference to "this
33 subchapter" for the reference to "Section 1."

34 Revised Law

35 Sec. 1952.159. OFFSET AGAINST LIABILITY CLAIM. (a) If a
36 liability claim is made by a guest or passenger described by Section
37 1952.151 against the owner or operator of the motor vehicle in which
38 the guest or passenger was riding or against the owner's or

1 operator's liability insurer, the owner or operator of the motor
2 vehicle or the owner's or operator's liability insurer is entitled
3 to an offset, credit, or deduction against any award made to the
4 guest or passenger in an amount equal to the amounts paid by the
5 owner, the operator, or the owner's or operator's automobile
6 liability insurer to the guest or passenger under personal injury
7 protection.

8 (b) This subchapter does not authorize a direct action
9 against a liability insurer if that right does not presently exist
10 at law. (V.T.I.C. Art. 5.06-3, Sec. (h).)

11 Source Law

12 (h) When any liability claim is made by any
13 guest or passenger described in paragraph (b) hereof
14 against the owner or operator of the motor vehicle in
15 which he was riding or the owner's or operator's
16 liability insurance carrier, the owner or operator of
17 such motor vehicle or his liability insurance carrier
18 shall be entitled to an offset, credit or deduction
19 against any award made to such guest or passenger in an
20 amount of money equal to the amounts paid by the owner,
21 operator or his automobile liability insurance carrier
22 under "personal injury protection" as defined in this
23 Act to such guests or passengers; provided, however,
24 that nothing herein shall be construed to authorize a
25 direct action against a liability insurance company if
26 such right does not presently exist at law.

27 Revised Law

28 Sec. 1952.160. INAPPLICABILITY TO ACCIDENT OR HEALTH
29 INSURANCE. This subchapter applies only to an automobile insurance
30 policy subject to this subtitle or Subchapter A, Chapter 5, and does
31 not apply to any other accident or health insurance policy,
32 regardless of whether the accident or health insurance policy
33 provides indemnity against automobile-connected injuries.
34 (V.T.I.C. Art. 5.06-3, Sec. (f).)

35 Source Law

36 (f) This article applies only to motor vehicle
37 insurance policies subject to this subchapter and does
38 not apply to other accident or health policies even
39 though they promise indemnity against
40 automobile-connected injuries.

41 Revisor's Note

42 Section (f), V.T.I.C. Article 5.06-3, refers to
43 an automobile insurance policy subject to "this

subchapter," meaning Subchapter A, V.T.I.C. Chapter 5. Portions of Subchapter A, Chapter 5, are revised in various chapters in this code. The provisions of Subchapter A that are revised and that regulate automobile insurance policies are revised in Subtitle C, Title 10, which includes this chapter. Other provisions of Subchapter A have not been revised. The revised law is drafted accordingly.

Revised Law

Sec. 1952.161. CERTAIN COVERAGE UNAFFECTED. This subchapter does not:

(1) affect the offering of medical payments coverage, disability benefits, or accidental death benefits, as presently prescribed by the commissioner; or

(2) prevent an insurer from providing benefits broader than the minimum benefits described by this subchapter, subject to the rules prescribed by the commissioner. (V.T.I.C. Art. 5.06-3, Sec. (g).)

Source Law

(g) Nothing contained in this Act shall affect the offering of medical payments coverage, disability benefits, and accidental death benefits, as presently prescribed by the State Board of Insurance; and nothing contained in this Act shall be construed to prevent an insurer from providing broader benefits than the minimum benefits enumerated in this Act subject to the rules and forms prescribed by the State Board of Insurance.

Revisor's Note

Section (g), V.T.I.C. Article 5.06-3, refers to "forms prescribed by the State Board of Insurance," meaning the commissioner of insurance for the reasons stated in Revisor's Note (1) to Section 1952.053. The revised law omits the reference to forms prescribed by the commissioner as unnecessary and misleading for the reason stated in Revisor's Note (2) to Section 1952.101.

[Sections 1952.162-1952.200 reserved for expansion]

1 SUBCHAPTER E. SHORT-TERM LIABILITY INSURANCE FOR
2 CERTAIN MOTORISTS

3 Revised Law

4 Sec. 1952.201. APPLICABILITY OF SUBCHAPTER. This
5 subchapter applies to an insurer authorized to write automobile
6 insurance in this state, including an insurance company, reciprocal
7 or interinsurance exchange, mutual insurance company, capital
8 stock company, county mutual insurance company, Lloyd's plan, or
9 other entity. (V.T.I.C. Art. 5.01C, Sec. 1(1).)

10 Source Law

11 Art. 5.01C

12 Sec. 1. In this article:

13 (1) "Insurer" means an insurance company,
14 interinsurance exchange, mutual, capital stock
15 company, county mutual, reciprocal association,
16 Lloyd's plan insurer, or other entity authorized to
17 write motor vehicle insurance in this state.

18 Revisor's Note

19 Section 1(1), V.T.I.C. Article 5.01C, refers to
20 an "interinsurance exchange," a "mutual," a "county
21 mutual," a "reciprocal association," and a "Lloyd's
22 plan insurer." The revised law substitutes for the
23 quoted language references to a "reciprocal or
24 interinsurance exchange," a "mutual insurance
25 company," a "county mutual insurance company," and a
26 "Lloyd's plan" for the reason stated in Revisor's Note
27 (2) to Section 1952.001.

28 Revised Law

29 Sec. 1952.202. DEFINITIONS. In this subchapter:

30 (1) "Motor vehicle" means any private passenger
31 vehicle or utility type vehicle that has a gross weight of not more
32 than 25,000 pounds.

33 (2) "Short-term liability insurance policy" means an
34 insurance policy that:

35 (A) provides coverage for at least 24 hours but
36 not for more than one week;

37 (B) meets the requirements of Chapter 601,

1 Transportation Code;

2 (C) covers liability for bodily injury, death,
3 and property damage arising from the use or operation of a motor
4 vehicle; and

5 (D) is not insurance assigned to an authorized
6 insurer by the Texas Automobile Insurance Plan Association under
7 Section 2151.102(a). (V.T.I.C. Art. 5.01C, Secs. 1(2), (3).)

8 Source Law

9 (2) "Motor vehicle" means any private
10 passenger vehicle or utility type vehicle that has a
11 gross weight of 25,000 pounds or less.

12 (3) "Short-term liability insurance
13 policy" means an insurance policy that:

14 (A) provides coverage for at least 24
15 hours but not for more than one week;

16 (B) meets the requirements of Chapter
17 601, Transportation Code;

18 (C) covers liability for bodily
19 injury, death, and property damage arising from the
20 use or operation of a motor vehicle; and

21 (D) is not insurance assigned to an
22 authorized insurance company by the Texas Automobile
23 Insurance Plan Association under Section 4(a), Article
24 21.81, of this code.

25 Revised Law

26 Sec. 1952.203. SHORT-TERM LIABILITY INSURANCE PROGRAM. (a)
27 The commissioner by rule may establish a program to provide for the
28 sale of short-term liability insurance policies to nonresident
29 motorists who are visiting this state.

30 (b) The commissioner may negotiate an agreement with any
31 insurer under which the insurer will sell insurance policies
32 described by this section. (V.T.I.C. Art. 5.01C, Sec. 2.)

33 Source Law

34 Sec. 2. (a) The commissioner by rule may
35 establish a program to provide for the sale of
36 short-term liability insurance policies to non-Texas
37 resident motorists visiting this state.

38 (b) The commissioner may negotiate an agreement
39 with any insurer under which the insurer will sell
40 policies described by Subsection (a) of this section.

41 Revised Law

42 Sec. 1952.204. AGENT LICENSE REQUIRED. A person
43 representing an insurer in selling short-term liability insurance
44 policies under this subchapter must be licensed under Title 13.

1 (V.T.I.C. Art. 5.01C, Sec. 3.)

2 Source Law

3 Sec. 3. A person representing an insurer in
4 selling short-term liability insurance policies under
5 this article must be licensed under Subchapter A,
6 Chapter 21, of this code.

7 Revisor's Note

8 Section 3, V.T.I.C. Article 5.01C, requires
9 certain persons to be licensed under "Subchapter A,
10 Chapter 21, of this code." Subchapter A, V.T.I.C.
11 Chapter 21, is revised in various chapters in this
12 code. The portions of Subchapter A, Chapter 21,
13 relevant to licensing agents are revised in Title 13 of
14 this code. The revised law is drafted accordingly.

15 Revised Law

16 Sec. 1952.205. SALE OF SHORT-TERM LIABILITY INSURANCE
17 POLICIES. An insurer selling short-term liability insurance
18 policies under this subchapter shall use policy forms adopted by
19 the commissioner under Article 5.06 or filed and in effect as
20 provided by Subchapter B, Chapter 2301, as applicable, unless the
21 insurer is exempt from using those forms. (V.T.I.C. Art. 5.01C,
22 Sec. 4.)

23 Source Law

24 Sec. 4. An insurer selling short-term liability
25 insurance policies under this article must use the
26 policy forms adopted by the commissioner under Article
27 5.06 of this code or filed and in effect as provided by
28 Article 5.145 of this code unless the insurer is exempt
29 from using those forms.

30 [Sections 1952.206-1952.250 reserved for expansion]

31 SUBCHAPTER F. GARAGE INSURANCE

32 Revised Law

33 Sec. 1952.251. DEFINITIONS. In this subchapter:

34 (1) "Garage customer" means a person or organization
35 other than:

36 (A) the named insured under a garage insurance
37 policy;

38 (B) an employee, director, officer, shareholder,

1 partner, or agent of the named insured; or

2 (C) a resident of the same household as:

3 (i) the named insured; or

4 (ii) an employee, director, officer,
5 shareholder, partner, or agent of the named insured.

6 (2) "Garage insurance" means automobile insurance as
7 defined by Article 5.01 issued to a named insured who is engaged in
8 the business of selling, servicing, or repairing motor vehicles as
9 defined by commissioner rule or order. (V.T.I.C. Art. 5.06-2, Sec.
10 (1) (part).)

11 Source Law

12 Art. 5.06-2. (1) Definitions. As used in this
13 Act:

14 (a) "Garage Insurance" means motor vehicle
15 or automobile insurance as defined in Article 5.01
16 hereof issued to a named insured engaged in the
17 business of selling, servicing or repairing motor
18 vehicles as now or hereafter defined by rules,
19 regulations or orders of the State Board of Insurance;

20 (b) "Garage Customer" means any person or
21 organization other than the named insured, or an
22 employee, director, officer, stockholder, partner, or
23 agent of the named insured; or a resident of the same
24 household as the named insured, such employee,
25 director, officer, stockholder, partner, or agent;
26

27 Revisor's Note

28 Section (1)(a), V.T.I.C. Article 5.06-2, refers
29 to motor vehicles "as now or hereafter defined by
30 rules, regulations or orders of the State Board of
31 Insurance." The revised law omits "as now or
32 hereafter" because under Section 311.027, Government
33 Code (Code Construction Act), applicable to the
34 revised law, a reference to a rule applies to all
35 reenactments, revisions, and amendments of the rule.
36 The reference to "regulations" is omitted from the
37 revised law for the reason stated in Revisor's Note (2)
38 to Section 1952.058.

39 Revised Law

40 Sec. 1952.252. GARAGE INSURANCE. (a) A garage insurance
41 policy may provide that a garage customer is not an insured under

1 the policy and that the coverage under the policy does not apply to
2 a garage customer except to the extent that any other insurance
3 coverage that is collectible and available to the garage customer
4 is not equal to the minimum financial responsibility limits
5 specified by Chapter 601, Transportation Code.

6 (b) Notwithstanding any provision to the contrary in
7 another insurance policy as to whether the insurance coverage
8 described by Subsection (a) that is provided under that policy is
9 primary, excess, or contingent insurance, or otherwise, the other
10 insurance coverage is the primary insurance as to the garage
11 customer.

12 (c) A garage insurance policy containing a provision
13 described by Subsection (a) may not cover a garage customer except
14 to the extent permitted by this section, notwithstanding the terms
15 of the other insurance policy providing coverage described by
16 Subsection (a). (V.T.I.C. Art. 5.06-2, Secs. (1) (part), (2).)

17 Source Law

18 Art. 5.06-2. (1) Definitions. As used in this
19 Act:

20
21 (c) "Financial Responsibility Limits"
22 means the minimum limits specified by the Texas Motor
23 Vehicle Safety-Responsibility Act.

24 (2) A policy of garage insurance may contain a
25 provision to the effect that garage customers are not
26 insureds under the garage insurance policy and that
27 the garage insurance shall not apply to garage
28 customers, except to the extent that other valid and
29 collectible insurance, if any, available to the garage
30 customer is not equal to the financial responsibility
31 limits. Notwithstanding any provision to the contrary
32 in such other policy or policies of insurance as to
33 whether such insurance is primary, excess, or
34 contingent insurance, or otherwise, such other valid
35 and collectible insurance shall be primary insurance
36 as to the garage customer. Any garage insurance policy
37 containing such a provision shall not cover garage
38 customers except to such extent, notwithstanding the
39 terms and provisions of such other policy or policies
40 of insurance.

41 Revisor's Note

42 (1) Section (2), V.T.I.C. Article 5.06-2,
43 refers to "valid and collectible" insurance. The
44 revised law omits "valid" for the reason stated in the
45 revisor's note to Section 1952.103.

1 (2) Section (2), V.T.I.C. Article 5.06-2,
2 refers to the "terms and provisions" of an insurance
3 policy. The revised law omits "provisions" because,
4 in this context, "provisions" is included in the
5 meaning of "terms."

6 Revisor's Note
7 (End of Subchapter)

8 Section (3), V.T.I.C. Article 5.06-2, provides
9 that Article 5.06-2 applies only to "insurance
10 policies issued or renewed or made subject to this Act
11 by endorsement after the effective date hereof." The
12 revised law omits this provision as obsolete. Article
13 5.06-2 was added by Chapter 35, Acts of the 61st
14 Legislature, 2nd Called Session, 1969. That act took
15 effect September 19, 1969. Any insurance policy
16 issued before that date has, by now, been renewed. The
17 omitted law reads:

18 (3) This Act shall apply only to
19 insurance policies issued or renewed or
20 made subject to this Act by endorsement
21 after the effective date hereof.

22 [Sections 1952.253-1952.300 reserved for expansion]

23 SUBCHAPTER G. REPAIR OF MOTOR VEHICLES

24 Revised Law

25 Sec. 1952.301. LIMITATION ON PARTS, PRODUCTS, OR REPAIR
26 PERSONS OR FACILITIES PROHIBITED. (a) Except as provided by rules
27 adopted by the commissioner, under an automobile insurance policy
28 that is delivered, issued for delivery, or renewed in this state, an
29 insurer may not directly or indirectly limit the insurer's coverage
30 under a policy covering damage to a motor vehicle by:

31 (1) specifying the brand, type, kind, age, vendor,
32 supplier, or condition of parts or products that may be used to
33 repair the vehicle; or

34 (2) limiting the beneficiary of the policy from
35 selecting a repair person or facility to repair damage to the
36 vehicle.

1 (b) In settling a liability claim by a third party against
2 an insured for property damage claimed by the third party, an
3 insurer may not require the third-party claimant to have repairs
4 made by a particular repair person or facility or to use a
5 particular brand, type, kind, age, vendor, supplier, or condition
6 of parts or products. (V.T.I.C. Art. 5.07-1, Secs. (a), (g).)

7 Source Law

8 Art. 5.07-1. (a) Except as provided by rules
9 duly adopted by the commissioner, under an auto
10 insurance policy that is delivered, issued for
11 delivery, or renewed in this state an insurer may not,
12 directly or indirectly, limit its coverage under a
13 policy covering damage to a motor vehicle by
14 specifying the brand, type, kind, age, vendor,
15 supplier, or condition of parts or products that may be
16 used to repair the vehicle or by limiting the
17 beneficiary of the policy from selecting a repair
18 person or facility to repair damage to the motor
19 vehicle covered under the policy.

20 (g) In the settlement of liability claims by a
21 third party against an insured for property damage
22 claimed by the third party, an insurer may not require
23 the third-party claimant to have repairs made by a
24 particular repair person or facility or to use a
25 particular brand, type, kind, age, vendor, supplier,
26 or condition of parts or products.

27 Revisor's Note

28 Section (a), V.T.I.C. Article 5.07-1, refers to
29 rules "duly" adopted by the commissioner of insurance.
30 The revised law omits "duly" as unnecessary because
31 the term does not add to the clear meaning of the law.

32 Revised Law

33 Sec. 1952.302. PROHIBITED ACTS IN CONNECTION WITH REPAIR OF
34 MOTOR VEHICLE. In connection with the repair of damage to a motor
35 vehicle covered under an automobile insurance policy, an insurer,
36 an employee or agent of an insurer, an insurance adjuster, or an
37 entity that employs an insurance adjuster may not:

38 (1) solicit or accept a referral fee or gratuity in
39 exchange for referring a beneficiary or third-party claimant to a
40 repair person or facility to repair the damage;

41 (2) state or suggest, either orally or in writing, to a
42 beneficiary that the beneficiary must use a specific repair person

1 or facility or a repair person or facility identified on a preferred
2 list compiled by an insurer for the damage repair or parts
3 replacement to be covered by the policy; or

4 (3) restrict the right of a beneficiary or third-party
5 claimant to choose a repair person or facility by requiring the
6 beneficiary or third-party claimant to travel an unreasonable
7 distance to repair the damage. (V.T.I.C. Art. 5.07-1, Sec. (b).)

8 Source Law

9 (b) In connection with the repair of damage to a
10 motor vehicle covered under an auto insurance policy,
11 an insurer, an employee of an insurer, an agent of an
12 insurer, a solicitor of insurance for an insurer, an
13 insurance adjuster, or an entity that employs an
14 insurance adjuster may not:

15 (1) solicit or accept a referral fee or
16 gratuity in exchange for referring a beneficiary or
17 third-party claimant to a repair person or facility to
18 repair the damage;

19 (2) state or suggest, either orally or in
20 writing, to a beneficiary that a specific repair
21 person or facility or a repair person or facility
22 identified on a preferred list compiled by an insurer
23 must be used by a beneficiary in order for the damage
24 repair or parts replacement to be covered by the
25 policy; or

26 (3) restrict a beneficiary's or
27 third-party claimant's right to choose a repair person
28 or facility by requiring the beneficiary or
29 third-party claimant to travel an unreasonable
30 distance to repair the damage.

31 Revisor's Note

32 Section (b), V.T.I.C. Article 5.07-1, refers to a
33 "solicitor of insurance" for an insurer. The revised
34 law omits the reference to "solicitor" because that
35 term, as it relates to a particular type of person
36 engaged in the business of insurance, was eliminated
37 by Chapter 703, Acts of the 77th Legislature, Regular
38 Session, 2001, and a person who performs the duties
39 formerly performed by a solicitor is now regulated as
40 an "agent."

41 Revised Law

42 Sec. 1952.303. CONTRACTS BETWEEN INSURER AND REPAIR PERSON
43 OR FACILITY. (a) A contract between an insurer and a repair person
44 or facility, including an agreement under which the repair person

1 or facility agrees to extend discounts for parts or labor to the
2 insurer in exchange for referrals by the insurer, may not result in
3 a reduction of coverage under an insured's automobile insurance
4 policy.

5 (b) The commissioner may adopt rules under Chapter 542 with
6 respect to any fraudulent activity of any party to an agreement
7 described by Subsection (a). (V.T.I.C. Art. 5.07-1, Secs. (c),
8 (h).)

9 Source Law

10 (c) A contract between an insurer and a repair
11 person or facility, including an agreement under which
12 the repair person or facility agrees to extend
13 discounts for parts or labor to the insurer in exchange
14 for referrals by the insurer, may not result in a
15 reduction of coverage under the insured's auto
16 insurance policy.

17 (h) The commissioner may exercise the
18 rule-making authority under Article 21.21-2 of this
19 code with respect to any fraudulent activity of any
20 party to an agreement described by Subsection (c) of
21 this article.

22 Revised Law

23 Sec. 1952.304. PROVISION OF INFORMATION REGARDING
24 REPAIRS. An insurer may not prohibit a repair person or facility
25 from providing a beneficiary or third-party claimant with
26 information that states:

27 (1) the description, manufacturer, or source of the
28 parts used; and

29 (2) the amounts charged to the insurer for the parts
30 and related labor. (V.T.I.C. Art. 5.07-1, Sec. (d).)

31 Source Law

32 (d) An insurer may not prohibit a repair person
33 or facility from providing a beneficiary or
34 third-party claimant with information that states the
35 description, manufacturer, or source of the parts used
36 and the amounts charged to the insurer for the parts
37 and related labor.

38 Revised Law

39 Sec. 1952.305. NOTICE OF RIGHTS REGARDING REPAIR OF MOTOR
40 VEHICLE. (a) At the time a motor vehicle is presented to an
41 insurer, an insurance adjuster, or other person in connection with

1 a claim for damage repair, the insurer, insurance adjuster, or
2 other person shall provide to the beneficiary or third-party
3 claimant notice of the provisions of this subchapter.

4 (b) The commissioner shall adopt a rule establishing the
5 method or methods insurers must use to comply with the notice
6 provisions of this section. (V.T.I.C. Art. 5.07-1, Sec. (e).)

7 Source Law

8 (e) At the time the vehicle is presented to an
9 insurer or an insurance adjuster or other person in
10 connection with a claim for damage repair, the insurer
11 or insurance adjuster or other person shall provide to
12 the beneficiary or third-party claimant notice of the
13 provisions of this article. The commissioner shall
14 adopt a rule establishing the method or methods
15 insurers shall use to comply with the notice
16 provisions in this subsection.

17 Revised Law

18 Sec. 1952.306. COMPLAINTS. A beneficiary, third-party
19 claimant, or repair person or facility may submit a written,
20 documented complaint to the department with respect to an alleged
21 violation of this subchapter. (V.T.I.C. Art. 5.07-1, Sec. (f).)

22 Source Law

23 (f) Any beneficiary, third-party claimant, or
24 repair person or facility may submit a written,
25 documented complaint to the department with respect to
26 an alleged violation of this article.

27 Revised Law

28 Sec. 1952.307. RULES. Rules adopted by the commissioner to
29 implement this subchapter must include requirements that:

30 (1) any limitation described by Section 1952.301(a) be
31 clearly and prominently displayed on the face of the insurance
32 policy or certificate in lieu of an insurance policy; and

33 (2) the insured give written consent to a limitation
34 described by Section 1952.301(a) after the insured is notified
35 orally and in writing of the limitation at the time the insurance
36 policy is purchased. (V.T.I.C. Art. 5.07-1, Sec. (i).)

37 Source Law

38 (i) Any rules adopted by the commissioner to
39 implement this article shall include, but not be
40 limited to, requirements that:

41 (1) any limitation described in Subsection

(a) of this section is clearly and prominently displayed on the face of the policy or certificate in lieu of a policy; and
(2) the insured give written consent to such a limitation, following both oral and written notification of any limitation at the time the policy is purchased.

Revisor's Note

Section (i), V.T.I.C. Article 5.07-1, states that rules shall "include, but not be limited to," certain requirements. "[B]ut not be limited to" is omitted as unnecessary because Section 311.005(13), Government Code (Code Construction Act), applicable to the revised law, and Section 312.011(19), Government Code, provide that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

[Chapters 1953-2000 reserved for expansion]

SUBTITLE D. FIRE INSURANCE AND ALLIED LINES,
INCLUDING RESIDENTIAL PROPERTY INSURANCE

CHAPTER 2001. GENERAL PROVISIONS: FIRE INSURANCE AND ALLIED
LINES, INCLUDING RESIDENTIAL PROPERTY INSURANCE

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1 CHAPTER 2001. GENERAL PROVISIONS: FIRE INSURANCE AND ALLIED
2 LINES, INCLUDING RESIDENTIAL PROPERTY INSURANCE

3 Revised Law

4 Sec. 2001.001. APPLICABILITY OF SUBTITLE. (a) Each
5 insurance policy or contract insuring property in this state
6 against loss by fire, including a policy or contract or portion of a
7 policy or contract that insures the shore end of a marine risk
8 against loss by fire, must be issued in accordance with:

- 9 (1) this chapter;
10 (2) Section 403.002;
11 (3) Subchapter C, Chapter 5;
12 (4) Subchapter H, Chapter 544;
13 (5) Subchapter D, Chapter 1806; and
14 (6) Chapters 252, 2002, 2003, 2004, 2005, 2006, and
15 2171.

16 (b) An insurer issuing an insurance policy or contract
17 described by Subsection (a), including a fire insurance company,
18 marine insurance company, fire and marine insurance company, and
19 fire and tornado insurance company, is governed by the laws
20 described by Subsection (a).

21 (c) This section applies to an insurer or to an insurance
22 policy or contract regardless of:

- 23 (1) the kind and character of property insured;
24 (2) whether the property is:
25 (A) fixed or movable;
26 (B) stationary or in transit; or
27 (C) consigned or billed for shipment inside or
28 outside the boundaries of this state or to a foreign country;
29 (3) whether the insurer is organized:
30 (A) under the laws of this state, another state,
31 territory, or possession of the United States, or a foreign
32 country; or
33 (B) by authority of the federal government; or
34 (4) the kind of insurer or the name of the insurer

1 issuing the policy or contract. (V.T.I.C. Art. 5.27 (part).)

2 Source Law

3 Art. 5.27. Every fire insurance company, every
4 marine insurance company, every fire and marine
5 insurance company, every fire and tornado insurance
6 company, and each and every insurance company of every
7 kind and name issuing a contract or policy of
8 insurance, or contracts or policies of insurance
9 against loss by fire on property within this State,
10 whether such property be fixed or movable, stationary
11 or in transit, or whether such property is consigned or
12 billed for shipment within or beyond the boundary of
13 this State or to some foreign county, whether such
14 company is organized under the laws of this State or
15 under the laws of any other state, territory or
16 possession of the United States, or foreign country,
17 or by authority of the Federal Government, [now
18 holding certificate of authority to transact business
19 in this State, shall be deemed to have accepted such
20 certificate and to transact business thereunder, upon
21 condition that it consents to the terms and provisions
22 of this subchapter and that it agrees to transact
23 business in this State, subject thereto;] it being
24 intended that every contract or policy of insurance
25 against the hazard of fire shall be issued in
26 accordance with the terms and provisions of this
27 subchapter, and the company issuing the same governed
28 thereby, regardless of the kind and character of such
29 property and whether the same is fixed or movable,
30 stationary or in transit, including the shore end of
31 all marine risks insured against loss by fire.

32 Revisor's Note

33 (1) V.T.I.C. Article 5.27 refers to a foreign
34 "county." It is clear from the context that "county"
35 is a typographical error and that the legislature
36 intended to refer to a foreign "country." The revised
37 law is drafted accordingly.

38 (2) V.T.I.C. Article 5.27 requires a fire
39 insurance policy and an insurer that issues a fire
40 insurance policy to comply with "this subchapter,"
41 meaning Subchapter C, V.T.I.C. Chapter 5. Included in
42 Subchapter C, Chapter 5, were V.T.I.C. Articles
43 5.43-4, 5.44, 5.49, 5.53, and 5.54. Article 5.43-4 was
44 revised in 1999 as Chapter 2154, Occupations Code,
45 Article 5.44 was revised in 1987 as Section 417.008,
46 Government Code, and Article 5.49 was revised,
47 effective April 1, 2005, in part in Chapter 251 of this
48 code. In addition, Articles 5.53 and 5.54 are revised

1 in part as Chapter 1807 of this code. The revised law
2 does not reference the statutes revising those
3 articles because those provisions do not regulate fire
4 insurance policies or insurers with respect to issuing
5 those policies.

6 Revised Law

7 Sec. 2001.002. RATES. (a) Rates for all lines of insurance
8 subject to a law described by Section 2001.001(a) are determined as
9 provided by Chapter 2251 and Article 5.13-2.

10 (b) The requirement imposed by Subsection (a) does not
11 affect the requirement for the commissioner to conduct inspections
12 of commercial property and prescribe a manual of rules and rating
13 schedules for commercial property under a law described by Section
14 2001.001(a). (V.T.I.C. Art. 5.25, Sec. (b); Art. 5.28, Sec. (d).)

15 Source Law

16 [Art. 5.25]

17 (b) Notwithstanding Subsection (a) of this
18 article, on and after the effective date of S.B. No.
19 14, Acts of the 78th Legislature, Regular Session,
20 2003, rates for homeowners and residential fire and
21 residential allied lines insurance coverage under this
22 subchapter are determined as provided by Subchapter Q
23 of this chapter, and rates for other lines of insurance
24 subject to this subchapter are determined as provided
25 by Article 5.13-2 of this code, except that on and
26 after December 1, 2004, rates for all lines of
27 insurance subject to this subchapter are determined as
28 provided by Article 5.13-2 of this code. This
29 subsection does not affect the requirement for the
30 commissioner to conduct inspections of commercial
31 property and prescribe a manual of rules and rating
32 schedules for commercial property under this
33 subchapter.

34 [Art. 5.28]

35 (d) Notwithstanding Subsection (a) of this
36 article, on and after the effective date of S.B. No.
37 14, Acts of the 78th Legislature, Regular Session,
38 2003, rates for homeowners and residential fire and
39 residential allied lines insurance coverage under this
40 subchapter are determined as provided by Subchapter Q
41 of this chapter, and rates for other lines of insurance
42 subject to this subchapter are determined as provided
43 by Article 5.13-2 of this code, except that on and
44 after December 1, 2004, rates for all lines of
45 insurance subject to this subchapter are determined as
46 provided by Article 5.13-2 of this code.

47 Revisor's Note

48 Section (b), V.T.I.C. Article 5.25, and Section

1 (d), V.T.I.C. Article 5.28, provide that
2 notwithstanding Section (a) of the respective
3 articles, on and after the effective date of S.B. No.
4 14, Acts of the 78th Legislature, Regular Session,
5 2003, rates for homeowners and residential fire and
6 residential allied lines insurance coverage under
7 Subchapter C, V.T.I.C. Chapter 5, are determined as
8 provided by Subchapter Q of that chapter, and rates for
9 other lines of insurance subject to Subchapter C of
10 that chapter are determined as provided by V.T.I.C.
11 Article 5.13-2, revised in part in Chapter 2251,
12 except that on and after December 1, 2004, rates for
13 all lines of insurance subject to Subchapter C of that
14 chapter are determined as provided by V.T.I.C. Article
15 5.13-2. The revised law omits as executed the
16 references to the law governing insurance rates before
17 December 1, 2004.

18 In addition, the relevant provisions of Article
19 5.13-2 that are revised are contained in Chapter 2251
20 of this code. Although that chapter contains other
21 provisions that are derived from V.T.I.C. Article
22 5.13-2C, the revised law appropriately refers to
23 Chapter 2251 in its entirety because the provisions
24 that are derived from Article 5.13-2C are necessary to
25 construe the provisions of Article 5.13-2 that are
26 revised in that chapter.

27 Revised Law

28 Sec. 2001.003. AUTHORITY TO REQUIRE SWORN STATEMENTS. For
29 an insurer described by Section 2001.001, the department may
30 require from the insurer or a director, officer, representative, or
31 agent of the insurer a sworn statement covering any period that
32 states:

33 (1) the rates and premiums collected for fire
34 insurance on each class of risks and on all property in this state;

1 (2) the causes of fire, if known to the insurer or
2 individual or if the insurer or individual possesses relevant
3 information or data or can obtain the information or data at
4 reasonable expense; and

5 (3) all necessary facts and information to allow the
6 department to determine enforcement and to enforce a law described
7 by Section 2001.001(a). (V.T.I.C. Art. 5.28, Sec. (a) (part).)

8 Source Law

9 Art. 5.28. (a) Said Board is authorized and
10 empowered to require sworn statements for any period
11 of time from any insurance company affected by this law
12 and from any of its directors, officers,
13 representatives, general agents, state agents,
14 special agents, and local agents of the rates and
15 premiums collected for fire insurance on each class of
16 risks, on all property in this State and of the causes
17 of fire, if such be known, if they are in possession of
18 such data, and information, or can obtain it at a
19 reasonable expense; and said Board is empowered to
20 require such statements showing all necessary facts
21 and information to enable said Board . . . to
22 determine and assist in the enforcement of the
23 provisions of this law.

24 Revisor's Note

25 (1) Section (a), V.T.I.C. Article 5.28, refers
26 to the "Board," meaning the Board of Insurance
27 Commissioners. Under Chapter 499, Acts of the 55th
28 Legislature, Regular Session, 1957, administration of
29 the insurance laws of this state was reorganized and
30 the powers and duties of the Board of Insurance
31 Commissioners were transferred to the State Board of
32 Insurance. Chapter 685, Acts of the 73rd Legislature,
33 Regular Session, 1993, abolished the State Board of
34 Insurance and transferred its functions to the
35 commissioner of insurance and the Texas Department of
36 Insurance. Throughout this chapter, references to the
37 board have been changed appropriately.

38 (2) Section (a), V.T.I.C. Article 5.28, refers
39 to an "insurance company affected by this law" and to
40 "the provisions of this law." The article is derived
41 from Section 12, Chapter 106, General Laws, Acts of the

1 33rd Legislature, Regular Session, 1913, which refers
2 to an insurance company affected by "this Act,"
3 meaning Chapter 106. Chapter 106 repealed the then
4 existing laws regulating fire insurance and fire
5 insurance companies and established a new system of
6 regulating that insurance and those companies.
7 Chapter 106 and amendments to that chapter were
8 codified in 1951 as Subchapter C, V.T.I.C. Chapter 5.
9 The relevant portions of Subchapter C that are revised
10 are revised in Title 10, which includes this chapter,
11 and elsewhere in this code. As explained in Revisor's
12 Note (2) to Section 2001.001, Section 2001.001
13 describes the insurers affected by the relevant
14 provisions of Subchapter C and does not reference the
15 irrelevant statutes revising V.T.I.C. Articles 5.43-4
16 and 5.44. Therefore, the revised law substitutes a
17 reference to an "insurer described by Section
18 2001.001" for the reference to an "insurance company
19 affected by this law," and substitutes a reference to
20 "a law described by Section 2001.001(a)" for the
21 reference to "the provisions of this law."

22 (3) Section (a), V.T.I.C. Article 5.28, refers
23 to the "representatives, general agents, state agents,
24 special agents, and local agents" of certain insurers.
25 The terms "general agent," "state agent," "special
26 agent," and "local agent" are obsolete terms that
27 describe the types of agents that may represent those
28 insurers. Therefore, the revised law omits "general
29 agents, state agents, special agents, and local
30 agents" as obsolete terms that are included within the
31 meaning of "representative" and "agent." Similar
32 changes have been made throughout this chapter.

33 Revised Law

34 Sec. 2001.004. AUTHORITY TO INSPECT AND TAKE TESTIMONY

1 REGARDING RECORDS. (a) The commissioner or a person authorized by
2 the commissioner may:

3 (1) visit:

4 (A) a general, local, or other office of an
5 insurer engaged in the business of insurance in this state;

6 (B) the insurer's home office located outside
7 this state, if applicable; and

8 (C) the office of any of the insurer's officers,
9 directors, agents, or other representatives; and

10 (2) require the insurer or an officer, director,
11 agent, or other representative of the insurer to produce for
12 inspection by the commissioner or the commissioner's authorized
13 representative all of the books, records, and papers of the
14 insurer, officer, director, agent, or representative.

15 (b) The commissioner or the commissioner's authorized
16 representative may:

17 (1) examine and make or have made copies of the books,
18 records, and papers described by Subsection (a); and

19 (2) take testimony under oath regarding the books,
20 records, and papers and compel the attendance of witnesses for that
21 purpose. (V.T.I.C. Art. 5.28, Sec. (b).)

22 Source Law

23 (b) The said Board shall also have the right, at
24 its discretion, either personally, or by someone duly
25 authorized by it, to visit the office whether general,
26 local or otherwise, of any insurance company doing
27 business in this State, and the home office of said
28 company outside of this State, if there be such, and
29 the office of any officers, directors, general agents,
30 state agents, local agents or representatives of such
31 company, and there require such company, its officers,
32 agents or representatives, to produce for inspection
33 by said Board or any of its duly authorized
34 representatives all books, records and papers of such
35 company or such agents and representatives; and the
36 said Board or its duly authorized agents or
37 representatives shall have the right to examine such
38 books and papers and make or cause to be made copies
39 thereof; and shall have the right to take testimony
40 under oath with reference thereto, and to compel the
41 attendance of witnesses for such purpose.

42 Revisor's Note

43 (1) Section (b), V.T.I.C. Article 5.28,

1 provides that in addition to the powers provided by
2 Section (a) of that article the commissioner of
3 insurance "also" has certain additional powers. The
4 revised law omits "also" as unnecessary. An accepted
5 general principle of statutory construction requires a
6 statute to be given cumulative effect with other
7 statutes unless it provides otherwise or unless the
8 statutes are in conflict. The general principle
9 applies to this revision.

10 (2) Section (b), V.T.I.C. Article 5.28,
11 authorizes the commissioner of insurance or a person
12 "duly" authorized by the commissioner to require
13 certain persons to produce certain records for
14 inspection by the commissioner or the commissioner's
15 "duly authorized representatives" and authorizes the
16 commissioner or the commissioner's "duly authorized
17 agents or representatives" to examine and copy the
18 records produced and take testimony regarding the
19 records. The revised law omits "duly" as unnecessary
20 because the word does not add to the clear meaning of
21 the law. In addition, the revised law substitutes a
22 reference to the commissioner's "authorized
23 representative" for the reference to "authorized
24 agents or representatives" in this context for
25 consistency of terminology and because "authorized
26 agent" is included within the meaning of "authorized
27 representative."

28 (3) Section (b), V.T.I.C. Article 5.28,
29 provides that the commissioner of insurance or an
30 authorized person may require production of certain
31 "books, records and papers," examine "such books and
32 papers," make copies "thereof," and take testimony
33 with reference "thereto." For consistency, the
34 revised law refers to "books, records, and papers" in

1 each of those instances.

2 Revised Law

3 Sec. 2001.005. AUTHORITY TO REQUIRE PROVISION OF DATA. The
4 department may require:

5 (1) any or all of the fire insurance companies engaged
6 in the business of insurance in this state to jointly or separately
7 provide to the department any data the company or companies
8 possess, including maps, tariffs, inspection reports, and any data
9 affecting fire insurance risks in this state or any part of this
10 state; and

11 (2) any two or more of those companies or any joint
12 agents or representatives of the companies to provide to the
13 department for use in implementing a law described by Section
14 2001.001(a) any data the companies, agents, or representatives
15 possess. (V.T.I.C. Art. 5.28, Sec. (c).)

16 Source Law

17 (c) Said Board shall be further empowered to
18 require the fire insurance companies transacting
19 business in this State or any of them, to furnish said
20 Board with any and all data which may be in their
21 possession, either jointly or severally, including
22 maps, tariffs, inspection reports and any and all data
23 affecting fire insurance risks in this State, or in any
24 portion thereof, and said Board shall be empowered to
25 require any two (2) or more of said companies, or any
26 joint agent or representative of them, to turn over any
27 and all such data in their possession, or any part
28 thereof, to said Board for its use in carrying out the
29 provisions of this law.

30 Revisor's Note

31 Section (c), V.T.I.C. Article 5.28, provides
32 that, in addition to the powers provided by Sections
33 (a) and (b) of that article, the Texas Department of
34 Insurance is "further" empowered. The revised law
35 omits "further" for the reason stated in Revisor's Note
36 (1) to Section 2001.004.

37 Revised Law

38 Sec. 2001.006. REPORT OF INFORMATION RELATING TO CERTAIN
39 FIRE LOSSES. (a) The state fire marshal, a fire marshal of a
40 political subdivision of this state, the chief of a fire department

1 in this state, or a peace officer in this state may request an
2 insurer investigating a fire loss of property in which damages or
3 losses exceed \$1,000 to release information in the insurer's
4 possession relating to that loss. The insurer shall release the
5 requested information and cooperate with the official. The
6 requested information may include only:

7 (1) an insurance policy relevant to the fire loss
8 under investigation and any application for a policy;

9 (2) policy premium payment records;

10 (3) the history of the insured's previous claims for
11 fire loss; and

12 (4) material relating to the investigation of the
13 loss, including:

14 (A) statements of any person;

15 (B) proof of loss; or

16 (C) other relevant evidence.

17 (b) This section does not authorize a public official or
18 agency to adopt or require any type of periodic report by an
19 insurer.

20 (c) An insurer that has reason to suspect that a fire loss to
21 the property of a person insured by the insurer was caused by
22 incendiary means and that receives a request for information under
23 Subsection (a) shall:

24 (1) notify the requesting official and provide the
25 official with all relevant material acquired during the insurer's
26 investigation of the fire loss;

27 (2) cooperate with and take any action requested of
28 the insurer by a law enforcement agency; and

29 (3) permit a person ordered by a court to inspect any
30 of the insurer's records relating to the insurance policy and the
31 loss.

32 (d) In the absence of fraud or malice, an insurer or a person
33 who provided information on the insurer's behalf is not liable for
34 damages in a civil action or subject to criminal prosecution for an

1 oral or written statement made or any other action taken that is
2 necessary to supply information required under this section.

3 (e) An official or a department or agency employee who
4 receives information under this section shall maintain the
5 confidentiality of the information until the information is
6 required to be released in a criminal or civil proceeding.

7 (f) An official described by Subsection (a) may be required
8 to testify as to any information in the official's possession
9 regarding the fire loss of property in a civil action in which a
10 person seeks recovery for the loss from an insurer under an
11 insurance policy.

12 (g) A person may not intentionally:

13 (1) refuse to release information requested under
14 Subsection (a);

15 (2) refuse to notify the fire marshal of a fire loss
16 required to be reported under Subsection (c);

17 (3) refuse to provide the fire marshal with relevant
18 information required to be provided under Subsection (c); or

19 (4) fail to maintain the confidentiality of
20 information that is confidential under Subsection (e). (V.T.I.C.
21 Art. 5.46.)

22 Source Law

23 Art. 5.46. (A) The State Fire Marshal, any fire
24 marshal of a political subdivision in Texas, or the
25 chief of any established fire department in Texas, or
26 any peace officer in Texas, may request any insurance
27 company investigating a fire loss of real or personal
28 property in which damages or losses exceed \$1,000 to
29 release information in its possession relative to that
30 loss. The company shall release the information and
31 cooperate with any official authorized to request such
32 information pursuant to this section. The information
33 may include but not exceed:

34 (1) any insurance policy relevant to a
35 fire loss under investigation and any application for
36 such a policy;

37 (2) policy premium payment records;

38 (3) history of previous claims made by the
39 insured for fire loss;

40 (4) material relating to the investigation
41 of the loss, including statements of any person, proof
42 of loss, or other relevant evidence.

43 (5) The provisions of this section shall
44 not be construed to authorize a public official or
45 agency to promulgate or require any type or form of

1 periodic report by an insurer.

2 (B) If an insurance company has reason to
3 suspect that a fire loss to its insured's real or
4 personal property was caused by incendiary means and
5 if it receives a request for information pursuant to
6 Section (A) of this article, the company shall notify
7 the requesting official and furnish him with all
8 relevant material acquired during its investigation of
9 the fire loss, cooperate with and take such action as
10 may be requested of it by any law enforcement agency,
11 and permit any person ordered by a court to inspect any
12 of its records pertaining to the policy and the loss.

13 (C) In the absence of fraud or malice no
14 insurance company or person who furnished information
15 on its behalf is liable for damages in a civil action
16 or subject to criminal prosecution for oral or written
17 statement made or any other action taken that is
18 necessary to supply information required pursuant to
19 this section.

20 (D) The officials and departmental and agency
21 personnel receiving any information furnished
22 pursuant to this section shall hold the information in
23 confidence until such time as its release is required
24 pursuant to a criminal or civil proceeding.

25 (E) Any official referred to in Section (A) of
26 this article may be required to testify as to any
27 information in his possession regarding the fire loss
28 of real or personal property in any civil action in
29 which any person seeks recovery under a policy against
30 an insurance company for the fire loss.

31 (F)(1) No person shall purposely refuse to
32 release any information requested pursuant to Section
33 (A) of this article.

34 (2) No person shall purposely refuse to
35 notify the fire marshal of a fire loss required to be
36 reported pursuant to Section (B) of this article.

37 (3) No person shall purposely refuse to
38 supply the fire marshal with pertinent information
39 required to be furnished pursuant to Section (B) of
40 this article.

41 (4) No person shall purposely fail to hold
42 in confidence information required to be held in
43 confidence by Section (D) of this article.

44 Revisor's Note

45 (1) Sections (A), (B), and (E), V.T.I.C. Article
46 5.46, refer to "real or personal" property. The
47 revised law omits the reference to "real or personal"
48 as unnecessary because Section 311.005(4), Government
49 Code (Code Construction Act), applicable to the
50 revised law, defines "property" as real and personal
51 property.

52 (2) Section (A)(5), V.T.I.C. Article 5.46,
53 refers to any "type or form" of periodic report by an
54 insurer. The reference to "form" is omitted from the
55 revised law because "form" is included within the

1 meaning of "type."

2 (3) Section (F), V.T.I.C. Article 5.46,
3 prohibits a person from "purposely" refusing or
4 failing to take certain actions. The revised law
5 substitutes "intentionally" for "purposely" because,
6 in the context of this section, "purposely" and
7 "intentionally" are synonymous and "intentionally" is
8 more commonly used.

9 Revised Law

10 Sec. 2001.007. CRIMINAL PENALTY. (a) An officer or
11 director of a fire insurance company described by Section 2001.001,
12 or an agent or person acting on behalf of or employed by a fire
13 insurance company described by Section 2001.001, commits an offense
14 if the officer, director, agent, or person intentionally:

15 (1) performs or causes to be performed, alone or in
16 conjunction with a corporation, company, or person, an act
17 prohibited by a law described by Section 2001.001(a);

18 (2) fails to perform an act required to be performed by
19 a law described by Section 2001.001(a);

20 (3) permits an act prohibited by a law described by
21 Section 2001.001(a); or

22 (4) otherwise violates a law described by Section
23 2001.001(a).

24 (b) An offense under this section is a misdemeanor
25 punishable by a fine of not less than \$300 or more than \$1,000.
26 (V.T.I.C. Art. 5.48-1.)

27 Source Law

28 Art. 5.48-1. Any officer or director of any fire
29 insurance company affected by the statutes of this
30 State creating the State Insurance Commission, or any
31 agent, or any one acting or employed by such company
32 who alone or in conjunction with any corporation,
33 company or person, shall wilfully do or cause to be
34 done any act prohibited or declared to be unlawful by
35 such statutes, or who wilfully fails to do any act
36 required to be done by such statutes, or who shall
37 wilfully permit any act directed not to be done, or who
38 shall be guilty of any wilful infraction of such
39 statutes, shall be fined not less than three hundred
40 nor more than one thousand dollars.

1 Revisor's Note

2 (1) V.T.I.C. Article 5.48-1 imposes a criminal
3 penalty on a fire insurance company "affected by the
4 statutes of this State creating the State Insurance
5 Commission" for certain violations of those statutes.
6 The article is derived from Section 26, Chapter 106,
7 General Laws, Acts of the 33rd Legislature, Regular
8 Session, 1913, which refers to an insurance company
9 "affected by this Act." The revised law substitutes
10 "described by Section 2001.001" for the quoted
11 language for the reason stated in Revisor's Note (2) to
12 Section 2001.003.

13 (2) V.T.I.C. Article 5.48-1 refers to a person
14 who "wilfully" engages in certain violations of this
15 code. The revised law substitutes "intentionally" for
16 "wilfully" because the terms are synonymous and
17 "intentional" is the term prescribed by Section 6.02,
18 Penal Code, which classifies culpable mental states in
19 criminal offenses.

20 (3) V.T.I.C. Article 5.48-1 refers to a person
21 who intentionally performs an act "prohibited or
22 declared to be unlawful" by certain provisions of this
23 code. The reference to "declared to be unlawful" is
24 omitted from the revised law because "declared to be
25 unlawful" is included within the meaning of
26 "prohibited."

27 (4) V.T.I.C. Article 5.48-1 states that an
28 offense under that article is punishable by a fine.
29 The revised law adds a statement that the offense is a
30 "misdemeanor" to conform to the way offenses are
31 described by the Penal Code.

32 Revised Law

33 Sec. 2001.008. IMMUNITY FROM PROSECUTION. (a) A person is
34 not excused from giving testimony or producing evidence when

1 legally required at the trial of another person charged with
2 violating a law relating to fire insurance on the ground that the
3 testimony or evidence may incriminate the person under the laws of
4 this state.

5 (b) A person may not be prosecuted or subjected to a penalty
6 or forfeiture for or because of a transaction, matter, or thing
7 about which the person testifies or produces evidence under this
8 section. (V.T.I.C. Art. 5.48-2.)

9 Source Law

10 Art. 5.48-2. No person shall be excused from
11 giving testimony or producing evidence when legally
12 called upon to do so at the trial of another charged
13 with violating any provision of the laws relating to
14 fire insurance on the ground that it may incriminate
15 him under the laws of this State; but no person shall
16 be prosecuted or subjected to any penalty or
17 forfeiture for, or on account of, any transaction,
18 matter or thing concerning which he may testify or
19 produce evidence under this law.

20 Revised Law

21 Sec. 2001.009. LIMITATION ON COMPENSATION AND EXPENSES.
22 The total amount of necessary compensation for experts, clerical
23 personnel, and other department employees and necessary expenses,
24 including travel expenses, incurred by the department in
25 implementing the laws described by Section 2001.001(a) may not
26 exceed the amount of the assessments on the gross premiums of all
27 fire insurance companies engaged in the business of insurance in
28 this state. (V.T.I.C. Art. 5.51 (part).)

29 Source Law

30 Art. 5.51. The necessary compensation of
31 experts, clerical force, and other persons employed by
32 said Board, and all necessary traveling expenses, and
33 such other expenses as may be necessary, incurred in
34 carrying out the provisions of this subchapter, [shall
35 be paid by warrants drawn by the Comptroller upon the
36 order of said Board.] The total amount of all salaries
37 and said other expenses shall not exceed the sum
38 produced by the assessments on the gross premiums of
39 all fire insurance companies doing business in this
40 State.

41 Revisor's Note

42 V.T.I.C. Article 5.51 provides that the necessary
43 compensation and expenses incurred by the Texas

1 Department of Insurance in implementing Subchapter C,
2 V.T.I.C. Chapter 5, shall be paid by warrants drawn by
3 the comptroller on the order of the department. The
4 revised law omits that provision because it is
5 substantively duplicative of provisions contained in
6 Chapter 2103, Government Code, which is a
7 comprehensive law covering procedures for withdrawing
8 money from the state treasury. The omitted law reads:

9 Art. 5.51. [The necessary
10 compensation of experts, clerical force,
11 and other persons employed by said Board,
12 and all necessary traveling expenses, and
13 such other expenses as may be necessary,
14 incurred in carrying out the provisions of
15 this subchapter,] shall be paid by warrants
16 drawn by the Comptroller upon the order of
17 said Board. . . .

18 Revised Law

19 Sec. 2001.010. PUBLIC GUIDE RELATING TO COMMERCIAL PROPERTY
20 RATING. (a) In this section, "rating agency" means a public or
21 private legal entity that is authorized to conduct commercial
22 property rating in this state.

23 (b) The commissioner shall make available to the public a
24 generalized guide that:

25 (1) summarizes the procedures used by the department
26 or other rating agency to rate nonresidential commercial buildings
27 in this state; and

28 (2) specifies how different construction elements and
29 techniques used in a building project affect the insurance rating
30 of the completed building.

31 (c) The commissioner may charge a reasonable fee to cover
32 the administrative costs of producing and distributing the guide.

33 (d) The commissioner shall review the information in the
34 guide in January of each odd-numbered year and shall revise the
35 guide as necessary to incorporate any changes that have occurred in
36 the preceding biennium that affect the information. (V.T.I.C.
37 Art. 5.25-1.)

Source Law

Art. 5.25-1. (a) The commissioner shall make available to the public a generalized guide that:

(1) summarizes the procedures used by the department or other rating agency to rate nonresidential commercial buildings in this state; and

(2) specifies how different construction elements and techniques used in a building project affect the insurance rating of the completed building.

(b) The commissioner may charge a reasonable fee to cover the administrative costs of producing and distributing the guide.

(c) The commissioner shall review the information in the guide in January of each odd-numbered year and shall revise the guide as necessary to incorporate any changes that have occurred in the preceding biennium that affect the information.

(d) For purposes of this article, "rating agency" means a public or private legal entity that is authorized to conduct commercial property rating in this state.

Revisor's Note
(End of Chapter)

(1) V.T.I.C. Article 5.42 provides in part that an insurance policy "heretofore issued" that provides that the policy is void if premiums are not paid before a date specified by the policy is in effect if the insurer or an agent of the insurer accepted the premium on the policy after that specified date. That article was derived without substantive change from Chapter 106, General Laws, Acts of the 33rd Legislature, Regular Session, 1913, which took effect July 2, 1913. Therefore, that provision applies only to policies that were issued before July 2, 1913, and that remain in effect. According to the Texas Department of Insurance, there are no policies described by Article 5.42 that remain in effect. For that reason, the revised law omits that provision as obsolete. The omitted law reads:

Art. 5.42. . . . All policies heretofore issued which provide that said policies shall be void for non-payment of premiums at a certain specified time, shall be and the same are in full force and effect, provided, that the company or any of its agents have accepted the premium on said policies after the expiration of the dates

1 named in said provisions fixing the date of
2 payment.

3 (2) V.T.I.C. Article 5.47 provides that if an
4 insurer violates Subchapter C, V.T.I.C. Chapter 5, the
5 commissioner of insurance shall, with the consent of
6 the attorney general, cancel the insurer's certificate
7 of authority to engage in the business of insurance in
8 this state. Article 5.47 was derived without
9 substantive change from Chapter 106, General Laws,
10 Acts of the 33rd Legislature, Regular Session, 1913.
11 That article is omitted from the revised law because it
12 was impliedly repealed by Section 7, V.T.I.C. Article
13 1.10, which was enacted by Chapter 491, Acts of the
14 52nd Legislature, Regular Session, 1951. That section
15 was revised in 1999 in relevant part as Section 82.051
16 of this code, which authorizes the commissioner of
17 insurance to cancel or revoke an authorization if the
18 holder of the authorization is found to be in violation
19 of, or to have failed to comply with, this code or a
20 rule of the commissioner, but which does not require
21 the attorney general's consent to take that action.
22 The omitted law reads:

23 Art. 5.47. If any insurance company
24 affected by the provisions of this
25 subchapter shall violate any provision of
26 this subchapter, the Board shall, by and
27 with the consent of the Attorney General,
28 cancel its certificate of authority to
29 transact business in this State.

30 (3) V.T.I.C. Article 5.48 authorizes the
31 commissioner of insurance, with the consent of the
32 attorney general, to revoke the authorization of an
33 insurer or an officer, agent, or other representative
34 of the insurer if the commissioner determines that the
35 insurer, officer, agent, or representative has
36 violated Subchapter C, V.T.I.C. Chapter 5. In
37 addition, that article provides that the revocation of
38 an authorization under that article does not affect

1 the liability of the insurer, officer, agent, or
2 representative for any other penalty provided by law.
3 Finally, that article provides that an action,
4 decision, or determination of the commissioner and the
5 attorney general in a case under that article is
6 subject to review by the courts of this state.

7 Article 5.48 was derived without substantive
8 change from Chapter 106, General Laws, Acts of the 33rd
9 Legislature, Regular Session, 1913. The parts of that
10 article authorizing the commissioner, with the consent
11 of the attorney general, to revoke an authorization
12 are omitted from the revised law for the reason stated
13 in Revisor's Note (2) to the end of this chapter. The
14 revised law also omits the parts of the article
15 providing for judicial review as duplicative of
16 Subchapter D, Chapter 36, of this code, which provides
17 for judicial review of an action, decision, or ruling
18 of the commissioner. In addition, the revised law
19 omits as unnecessary the part of Article 5.48 relating
20 to the cumulative effect of that article. The omitted
21 law reads:

22 Art. 5.48. The Board, upon
23 ascertaining that any insurance company or
24 officer, agent or representative thereof,
25 has violated any provision of this
26 subchapter, may, at its discretion, and
27 with the consent and approval of the
28 Attorney General, revoke the certificate of
29 authority of such company, officer, agent,
30 or representative but such revocation of
31 any certificate shall in no manner affect
32 the liability of such company, officer,
33 agent, or representative to the infliction
34 of any other penalty provided by law. Any
35 action, decision or determination of the
36 Board and the Attorney General in such cases
37 shall be subject to the review of the courts
38 of this State as herein provided.

1 CHAPTER 2002. POLICY PROVISIONS AND FORMS FOR FIRE INSURANCE AND
2 ALLIED LINES, INCLUDING RESIDENTIAL PROPERTY INSURANCE
3 SUBCHAPTER A. POLICY PROVISIONS
4 Sec. 2002.001. ENDORSEMENTS REDUCING AMOUNT OF
5 COVERAGE 944
6 Sec. 2002.002. LIEN ON INSURED PROPERTY 945
7 Sec. 2002.003. COVERAGES FOR SPOUSES AND FORMER
8 SPOUSES 946
9 Sec. 2002.004. JEWELRY COVERAGE 946
10 Sec. 2002.005. COINSURANCE CLAUSES 947
11 Sec. 2002.006. PROVISIONS GOVERNING CERTAIN CONDITIONS
12 OR RISKS 950
13 [Sections 2002.007-2002.050 reserved for expansion]
14 SUBCHAPTER B. POLICY FORMS
15 Sec. 2002.051. POLICY FORMS AND ENDORSEMENTS FOR
16 RESIDENTIAL PROPERTY INSURANCE 955
17 Sec. 2002.052. APPLICABILITY OF OTHER LAW TO
18 RESIDENTIAL PROPERTY INSURANCE 955
19 [Sections 2002.053-2002.100 reserved for expansion]
20 SUBCHAPTER C. ITEMS PROVIDED TO POLICYHOLDER IN CONNECTION WITH
21 INSURANCE POLICY
22 Sec. 2002.101. RATE ANALYSIS 956
23 Sec. 2002.102. NOTICE OF RENEWAL 957

24 CHAPTER 2002. POLICY PROVISIONS AND FORMS FOR FIRE INSURANCE AND
25 ALLIED LINES, INCLUDING RESIDENTIAL PROPERTY INSURANCE
26 SUBCHAPTER A. POLICY PROVISIONS
27 Revised Law
28 Sec. 2002.001. ENDORSEMENTS REDUCING AMOUNT OF
29 COVERAGE. An insurer may not use an endorsement to a policy form to
30 which Article 5.35, Subchapter B, or Subchapter B, Chapter 2301,
31 applies that reduces the amount of coverage that would otherwise be
32 provided under the policy unless:
33 (1) the insured requests the endorsement; or
34 (2) the insurer provides the policyholder with a

1 written explanation of the change made by the endorsement before
2 the effective date of the change. (V.T.I.C. Art. 5.36.)

3 Source Law

4 Art. 5.36. An insurer may not use an endorsement
5 to a policy form to which Article 5.35 of this code or
6 Article 5.145 of this code applies that reduces the
7 amount of coverage, unless requested by the insured,
8 that would otherwise be provided under the policy
9 unless the insurer provides the policyholder with a
10 written explanation of the change made by the
11 endorsement before the effective date of the change.

12 Revised Law

13 Sec. 2002.002. LIEN ON INSURED PROPERTY. A provision in an
14 insurance policy issued by an insurer subject to this subtitle or
15 Subchapter C, Chapter 5, is void if the provision states that the
16 encumbrance of the insured property by a lien of any character at
17 the time of or after the policy's issuance renders the policy void.
18 (V.T.I.C. Art. 5.37.)

19 Source Law

20 Art. 5.37. Any provision in any policy of
21 insurance issued by any company subject to the
22 provisions of this subchapter to the effect that if
23 said property is encumbered by a lien of any character
24 or shall after the issuance of such policy become
25 encumbered by a lien of any character, then such
26 encumbrance shall render such policy void, shall be of
27 no force and effect. Any such provision within or
28 placed upon any such policy shall be null and void.

29 Revisor's Note

30 (1) V.T.I.C. Article 5.37 refers to "this
31 subchapter," meaning Subchapter C, V.T.I.C. Chapter 5.
32 Portions of that subchapter have been revised in
33 various titles of this code. The relevant provisions
34 of Subchapter C, Chapter 5, that are revised are
35 revised in Subtitle D, Title 10, of this code, which
36 includes this chapter. For that reason, the revised
37 law substitutes a reference to "this subtitle or
38 Subchapter C, Chapter 5," for references to "this
39 subchapter" throughout this chapter.

40 (2) V.T.I.C. Article 5.37 provides that certain
41 provisions in an insurance policy "shall be of no force

1 and effect" and "shall be null and void." Throughout
2 this subchapter, the revised law omits "shall be of no
3 force and effect," "shall be null," and similar
4 phrases because those phrases are included in the
5 meaning of "is void."

6 Revised Law

7 Sec. 2002.003. COVERAGES FOR SPOUSES AND FORMER SPOUSES. A
8 homeowners insurance policy or fire insurance policy promulgated
9 under Article 5.35 or filed and in effect as provided by Subchapter
10 B, Chapter 2301, may not be delivered, issued for delivery, or
11 renewed in this state unless the policy contains the following
12 language: "It is understood and agreed that this policy, subject to
13 all other terms and conditions contained in this policy, when
14 covering residential community property, as defined by state law,
15 shall remain in full force and effect as to the interest of each
16 spouse covered, irrespective of divorce or change of ownership
17 between the spouses unless excluded by endorsement attached to this
18 policy until the expiration of the policy or until canceled in
19 accordance with the terms and conditions of this policy."
20 (V.T.I.C. Art. 5.35-1.)

21 Source Law

22 Art. 5.35-1. A homeowner's policy or fire policy
23 promulgated under Article 5.35 of this code or filed
24 and in effect as provided by Article 5.145 of this code
25 may not be delivered, issued for delivery, or renewed
26 in this state unless the policy contains the following
27 language: "It is understood and agreed that this
28 policy, subject to all other terms and conditions
29 contained in this policy, when covering residential
30 community property, as defined by state law, shall
31 remain in full force and effect as to the interest of
32 each spouse covered, irrespective of divorce or change
33 of ownership between the spouses unless excluded by
34 endorsement attached to this policy until the
35 expiration of the policy or until canceled in
36 accordance with the terms and conditions of this
37 policy."

38 Revised Law

39 Sec. 2002.004. JEWELRY COVERAGE. (a) In this section,
40 "personal property insurance" means insurance against damage to or
41 loss of tangible personal property, including coverage provided in

1 a homeowners insurance policy, residential fire and allied lines
2 insurance policy, or farm and ranch owners insurance policy.

3 (b) This section applies to each insurer that provides
4 personal property insurance in this state, including a county
5 mutual insurance company, farm mutual insurance company, Lloyd's
6 plan, and reciprocal or interinsurance exchange.

7 (c) An insurer that provides personal property insurance
8 coverage in this state for jewelry may elect to pay either:

9 (1) the stated value of the jewelry item; or

10 (2) the actual cost of replacing the jewelry item with
11 one of like kind and quality. (V.T.I.C. Art. 5.35-2.)

12 Source Law

13 Art. 5.35-2

14 Sec. 1. In this article, "personal property
15 insurance" means insurance against damage to or loss
16 of tangible personal property, including coverage
17 provided in a homeowners policy, residential fire and
18 allied lines policy, or farm and ranch owners policy.

19 Sec. 2. This article applies to each insurer
20 that provides personal property insurance in this
21 state, including a county mutual insurer, farm mutual
22 insurer, Lloyd's plan, or reciprocal or interinsurance
23 exchange.

24 Sec. 3. An insurer that provides personal
25 property insurance coverage in this state for jewelry
26 will have the option to elect either to pay the stated
27 value or actual replacement of the jewelry item with
28 one of like kind and quality.

29 Revised Law

30 Sec. 2002.005. COINSURANCE CLAUSES. (a) Except as
31 otherwise provided by this section, an insurer subject to this
32 subtitle or Subchapter C, Chapter 5, may not issue an insurance
33 policy or contract covering property in this state that contains a
34 clause that:

35 (1) requires the insured to obtain or maintain a
36 larger amount of insurance than expressed in the policy or
37 contract; or

38 (2) in any way provides that the insured is liable as a
39 coinsurer with the insurer issuing the policy or contract for any
40 part of the loss or damage that may be caused by fire to the property
41 described in the policy or contract.

1 (b) A clause described by Subsection (a) is void.

2 (c) A coinsurance clause may be included in an insurance
3 policy written on cotton, grain, or other products in the process of
4 marketing, shipping, storing, or manufacturing.

5 (d) An insured may be given an option to accept an insurance
6 policy or contract that contains a clause described by Subsection
7 (a) covering a class of property other than the property described
8 by Subsection (c), a private dwelling, or a stock of merchandise
9 offered for sale at retail that has a value of less than \$10,000, if
10 the insured is allowed a reduction in the premium rate for the
11 policy or contract. A clause to which this subsection applies is
12 valid and binding. The commissioner may promulgate the premium
13 rates that apply to a coinsurance clause under this subsection.

14 (e) The commissioner by order may authorize or require the
15 use of any form of coinsurance clause in connection with an
16 insurance policy that insures against the hazards of tornado,
17 windstorm, and hail on any class of property. The commissioner may
18 adopt rules with reference to:

19 (1) coinsurance clauses authorized or required by this
20 subsection and the use of those clauses; and

21 (2) credits in premium rates for the use of
22 coinsurance clauses authorized or required by this subsection.

23 (V.T.I.C. Art. 5.38.)

24 Source Law

25 Art. 5.38. No company subject to the provisions
26 of this subchapter may issue any policy or contract of
27 insurance covering property in this State, which shall
28 contain any clause or provision requiring the assured
29 to take out or maintain a larger amount of insurance
30 than expressed in such policy, nor in any way providing
31 that the assured shall be liable as a co-insurer with
32 the company issuing the policy for any part of the loss
33 or damage which may be caused by fire to the property
34 described in such policy, and any such clause or
35 provisions, except as herein provided, shall be null
36 and void, and of no effect; provided, co-insurance
37 clauses and provisions may be inserted in policies
38 written upon cotton, grain, or other products in
39 process of marketing, shipping, storing or
40 manufacturing.

41 Provided, further, it shall be optional with an
42 insured to accept a policy or contract of insurance
43 containing such clause or provision covering other

1 classes of property, except private dwellings, and
2 except stocks of merchandise offered for sale at
3 retail when of a value less than Ten Thousand
4 (\$10,000.00) Dollars, when a reduction in the rate is
5 allowed for such policy, and said clause in such policy
6 shall be valid and binding; and the Board of Insurance
7 Commissioners shall have power to name the rates to
8 apply when such co-insurance clause or provision shall
9 be used.

10 Provided, further, that by appropriate order the
11 Board of Insurance Commissioners may authorize, and in
12 its discretion require the use of any form of
13 co-insurance clauses on or in connection with
14 insurance policies covering against the hazards of
15 tornado, windstorm and hail, on any or all classes of
16 property; the Board to make such rules and regulations
17 with reference to such clauses and the use thereof, as
18 well as credits in premium rates for the use thereof on
19 policies covering against the hazards mentioned as it
20 may deem proper.

21 Revisor's Note

22 (1) V.T.I.C. Article 5.38 refers to a "clause or
23 provision" of an insurance policy or contract. The
24 revised law omits "provision" because, in this
25 context, "provision" is included in the meaning of
26 "clause."

27 (2) V.T.I.C. Article 5.38 refers to the "Board
28 of Insurance Commissioners." Under Chapter 499, Acts
29 of the 55th Legislature, Regular Session, 1957,
30 administration of the insurance laws of this state was
31 reorganized and the powers and duties of the Board of
32 Insurance Commissioners were transferred to the State
33 Board of Insurance. Chapter 685, Acts of the 73rd
34 Legislature, Regular Session, 1993, abolished the
35 State Board of Insurance and transferred its functions
36 to the commissioner of insurance and the Texas
37 Department of Insurance. Throughout this chapter,
38 references to the Board of Insurance Commissioners or
39 the "Board" have been changed appropriately.

40 (3) V.T.I.C. Article 5.38 refers to "rules and
41 regulations." The reference to "regulations" is
42 omitted from the revised law because under Section
43 311.005(5), Government Code (Code Construction Act), a
44 rule is defined to include a regulation. That

definition applies to the revised law.

Revised Law

Sec. 2002.006. PROVISIONS GOVERNING CERTAIN CONDITIONS OR RISKS. (a) This chapter; Sections 403.002, 2001.001-2001.006, 2001.009, and 2001.010; Subchapter H, Chapter 544; Subchapter D, Chapter 1806; Chapters 2003, 2004, 2006, and 2171; and Articles 5.25, 5.25A, 5.25-3, 5.26, 5.27, 5.28, 5.29, 5.30, 5.31, 5.32, 5.34, 5.35, 5.39, 5.40, and 5.41 govern the following in the same manner and to the same extent those provisions govern fire insurance and fire insurance rates:

(1) insurance coverage for any of the following conditions or risks:

(A) weather or climatic conditions, including lightning, tornado, windstorm, hail, cyclone, rain, or frost and freeze;

(B) earthquake or volcanic eruption;

(C) smoke or smudge;

(D) excess or deficiency of moisture;

(E) flood;

(F) the rising water of an ocean or an ocean's tributary;

(G) bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, or any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe;

(H) vandalism or malicious mischief;

(I) strike or lockout;

(J) explosion, as provided by Subsection (b);

(K) water or other fluid or substance resulting from:

(i) the breakage or leakage of a sprinkler, pump, or other apparatus erected for extinguishing fire, or a water pipe or other conduit or container; or

(ii) casual water entering a building

1 through a leak or opening in the building or by seepage through
2 building walls; or

3 (L) accidental damage to a sprinkler, pump, fire
4 apparatus, pipe, or other conduit or container described by
5 Paragraph (K)(i);

6 (2) premium rates in this state for the insurance
7 described by Subdivision (1); and

8 (3) all matters pertaining to the insurance described
9 by Subdivision (1), except as provided by this section with respect
10 to marine insurance as defined by Section 1807.001.

11 (b) In this section:

12 (1) "explosion" includes:

13 (A) the explosion of a pressure vessel, other
14 than a steam boiler of more than 15 pounds pressure, in a building
15 designed and used solely for residential purposes by not more than
16 four families;

17 (B) an explosion of any kind originating outside
18 of an insured building or outside of the building containing the
19 insured property;

20 (C) the explosion of a pressure vessel that does
21 not contain steam or that is not operated with steam coils or steam
22 jets; and

23 (D) an electric disturbance causing or
24 concomitant with an explosion in public service or public utility
25 property; and

26 (2) insurance coverage for explosion does not include
27 coverage for loss of or damage to any property of the insured
28 resulting from the explosion of or injury to:

29 (A) a boiler, heater, or other fired pressure
30 vessel;

31 (B) an unfired pressure vessel;

32 (C) a pipe or container connected with a boiler
33 or vessel described by Paragraph (A) or (B);

34 (D) an engine, turbine, compressor, pump, or

1 wheel;

2 (E) an apparatus generating, transmitting, or
3 using electricity; or

4 (F) any other machinery or apparatus connected
5 with or operated by a boiler, vessel, or machine described by
6 Paragraphs (A)-(E).

7 (c) This section does not apply to:

8 (1) a farm mutual insurance company operating under
9 Chapter 911;

10 (2) a county mutual insurance company operating under
11 Chapter 912;

12 (3) a mutual insurance company engaged in business
13 under Chapter 12, Title 78, Revised Statutes, before that chapter's
14 repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st
15 Called Session, 1929, as amended by Section 1, Chapter 60, General
16 Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that
17 retains the rights and privileges under the repealed law to the
18 extent provided by those sections;

19 (4) the making of inspections or issuance of
20 certificates of inspections on a boiler, apparatus, or machinery
21 described by Subsection (b)(2), whether insured or otherwise; or

22 (5) the insurance of a vessel or craft, its cargo,
23 marine builder's risk, marine protection and indemnity, or another
24 risk commonly insured under a marine insurance policy, as
25 distinguished from an inland marine insurance policy. (V.T.I.C.
26 Art. 5.52, Secs. (a), (c); Art. 5.53 (part); Art. 5.54 (part).)

27 Source Law

28 Art. 5.52. (a) The writing of insurance
29 against loss by lightning, tornado, windstorm, hail,
30 smoke or smudge, cyclone, earthquake, volcanic
31 eruption, rain, frost and freeze, weather or climatic
32 conditions, excess or deficiency of moisture, flood,
33 the rising of the waters of the ocean or its
34 tributaries, bombardment, invasion, insurrection,
35 riot, civil war or commotion, military or usurped
36 power, any order of a civil authority made to prevent
37 the spread of a conflagration, epidemic or
38 catastrophe, vandalism or malicious mischief, strike
39 or lockout, explosion, water or other fluid or
40 substance, resulting from the breakage or leakage of

sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or openings in buildings, or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or containers, and the rates to be collected therefor in this State, and all matters pertaining to such insurance except as hereinafter set out as to marine insurance as defined by Article 5.53 of this code, shall be governed and controlled by the provisions of Articles 5.25 to 5.48, inclusive, and also Articles 5.50 to 5.51, inclusive, of this subchapter and Article 5.67 of Subchapter D of this Chapter, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said articles of this code.

(c) The term "explosion" as used in this article shall not include insurance against loss of or damage to any property of the insured, resulting from the explosion of or injury to (a) any boiler, heater, or other fired pressure vessel; (b) any unfired pressure vessel; (c) pipes or containers connected with any of said boilers or vessels; (d) any engine, turbine, compressor, pump, or wheel; (e) any apparatus generating, transmitting or using electricity; (f) any other machinery or apparatus connected with or operating by any of the previously named boilers, vessels or machines; nor shall same include the making of inspections and issuance of certificates of inspections upon any such boiler, apparatus or machinery, whether insured or otherwise. Said term shall include, but shall not be limited to (1) the explosion of pressure vessels (except steam boilers of more than fifteen pounds pressure) in buildings designed and used solely for residential purposes by not more than four (4) families; (2) explosion of any kind originating outside of the insured buildings or outside of the building containing the property insured; (3) explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jets; (4) electric disturbance causing or concomitant with an explosion in public service or public utility property.

Art. 5.53. . . . None of the terms contained in Article 5.52 shall be deemed to include insurance of vessels or craft, their cargoes, marine builder's risk, marine protection and indemnity, or other risk commonly insured under marine as distinguished from inland marine insurance policies. . . .

Art. 5.54. Nothing in Articles [5.49,] 5.52 and [5.53] of this subchapter shall ever be construed to apply to any farm mutual insurance company operating under Chapter 16 of this Code or to any company now operating under Chapter 12, of Title 78, which has heretofore been repealed. Nothing in Articles 5.52 and [5.53] of this subchapter shall ever be construed to apply to any county mutual insurance company operating under Chapter 17 of this Code.

Revisor's Note

(1) Section (a), V.T.I.C. Article 5.52, refers to the "writing of insurance against loss by"

1 specified occurrences. For drafting convenience and
2 consistency throughout this code, the revised law
3 substitutes "insurance coverage for any of the
4 following conditions or risks" for the quoted
5 language.

6 (2) Section (a), V.T.I.C. Article 5.52,
7 provides that V.T.I.C. "Articles 5.25 to 5.48,
8 inclusive, and also Articles 5.50 to 5.51,
9 inclusive, . . . and Article 5.67" govern certain
10 kinds of insurance coverage, including premium rates
11 for that insurance, in the same manner and to the same
12 extent those provisions govern fire insurance and fire
13 insurance rates. Included in those articles are
14 V.T.I.C. Articles 5.43-1, 5.43-2, and 5.43-3, V.T.I.C.
15 Article 5.43-4, which was revised in 1999 as Chapter
16 2154, Occupations Code, V.T.I.C. Article 5.44, which
17 was revised in 1987 as Section 417.008, Government
18 Code, and V.T.I.C. Article 5.67, revised in this code
19 as Section 2051.051. The revised law does not
20 reference those provisions because they do not govern
21 fire insurance or fire insurance rates.

22 (3) Section (a), V.T.I.C. Article 5.52,
23 provides that the writing of insurance against certain
24 risks is "governed and controlled" by specified laws.
25 The revised law omits the reference to "controlled"
26 because "controlled" is included in the meaning of
27 "governed."

28 (4) Section (b), V.T.I.C. Article 5.52,
29 provides that rain insurance and hail insurance on
30 farm crops are governed by V.T.I.C. Article 5.13-2.
31 The revised law omits this provision as unnecessary.
32 Sections 2(a)(12) and (13), V.T.I.C. Article 5.13-2,
33 revised as Sections 2251.003(b)(12) and (13) and
34 2301.003(b)(12) and (13) of this code, apply to all of

1 the kinds of insurance described by Section (a),
2 V.T.I.C. Article 5.52, including rain insurance and
3 hail insurance on farm crops, and it is unnecessary to
4 repeat that in this chapter. The omitted law reads:

5 (b) Notwithstanding Subsection (a)
6 of this section, rain insurance and hail
7 insurance on farm crops are governed by
8 Article 5.13-2 of this code.

9 (5) Section (c), V.T.I.C. Article 5.52, refers
10 to "include, but shall not be limited to." "[B]ut
11 shall not be limited to" is omitted as unnecessary
12 because Section 311.005(13), Government Code (Code
13 Construction Act), and Section 312.011(19),
14 Government Code, applicable to the revised law,
15 provide that "includes" and "including" are terms of
16 enlargement and not of limitation and do not create a
17 presumption that components not expressed are
18 excluded.

19 [Sections 2002.007-2002.050 reserved for expansion]

20 SUBCHAPTER B. POLICY FORMS

21 Revised Law

22 Sec. 2002.051. POLICY FORMS AND ENDORSEMENTS FOR
23 RESIDENTIAL PROPERTY INSURANCE. Notwithstanding Subsections
24 (a)-(j), Article 5.35, policy forms and endorsements for
25 residential property insurance in this state are regulated under
26 Subchapter A, Chapter 2301, and Article 5.13-2. (V.T.I.C. Art.
27 5.35, Sec. (k)(1), as added Acts 78th Leg., R.S., Ch. 206.)

28 Source Law

29 (k)(1) Notwithstanding Subsections (a)-(j) of
30 this article, policy forms and endorsements for
31 residential property insurance in this state are
32 regulated under Article 5.13-2 of this code.

33 Revised Law

34 Sec. 2002.052. APPLICABILITY OF OTHER LAW TO RESIDENTIAL
35 PROPERTY INSURANCE. An insurer may continue to use a policy form
36 or endorsement promulgated, approved, or adopted by the
37 commissioner under Article 5.35 before June 11, 2003, on

1 notification in writing to the commissioner that the insurer will
2 continue to use the policy form or endorsement. (V.T.I.C.
3 Art. 5.35, Sec. (k)(2), as added Acts 78th Leg., R.S., Ch. 206.)

4 Source Law

5 (2) An insurer may continue to use the
6 policy forms and endorsements promulgated, approved,
7 or adopted by the commissioner under this article
8 before the effective date of S.B. No. 14, Acts of the
9 78th Legislature, Regular Session, 2003, on
10 notification in writing to the commissioner that the
11 insurer will continue to use the policy forms and
12 endorsements promulgated, approved, or adopted by the
13 commissioner under this article.

14 Revisor's Note

15 Section (k)(2), V.T.I.C. Article 5.35, as added
16 by Chapter 206, Acts of the 78th Legislature, Regular
17 Session, 2003, refers to policy forms and endorsements
18 promulgated, approved, or adopted under V.T.I.C.
19 Article 5.35 "before the effective date of S.B. No. 14,
20 Acts of the 78th Legislature, Regular Session, 2003."
21 That act took effect June 11, 2003. The revised law
22 substitutes that date for the quoted language.

23 [Sections 2002.053-2002.100 reserved for expansion]

24 SUBCHAPTER C. ITEMS PROVIDED TO POLICYHOLDER IN CONNECTION WITH
25 INSURANCE POLICY

26 Revised Law

27 Sec. 2002.101. RATE ANALYSIS. (a) On issuing a fire
28 insurance policy, an insurer engaged in the business of fire
29 insurance in this state shall provide the policyholder with a
30 written analysis of the rate or premium charged for the policy
31 showing the items of charge and credit that determine the rate or
32 premium.

33 (b) Subsection (a) does not apply if the insurer has
34 previously provided the policyholder with an analysis of the rate
35 or premium. (V.T.I.C. Art. 5.30, Sec. (a) (part).)

36 Source Law

37 Art. 5.30. (a) When a policy of fire insurance
38 shall be issued by any company transacting the
39 business of fire insurance in this State, such company

1 shall furnish the policyholder with a written or
2 printed analysis of the rate or premium charged for
3 such policy, showing the items of charge and credit
4 which determine the rate, unless such policyholder has
5 theretofore been furnished with such analysis of such
6 rate. . . .

7 Revisor's Note

8 Section (a), V.T.I.C. Article 5.30, refers to a
9 "written or printed" analysis. The revised law omits
10 the reference to "printed" because "printed" is
11 included in the meaning of "written."

12 Revised Law

13 Sec. 2002.102. NOTICE OF RENEWAL. (a) An insurer,
14 including a farm mutual insurance company, county mutual insurance
15 company, Lloyd's plan, or reciprocal or interinsurance exchange,
16 that renews a homeowners insurance policy, fire and residential
17 allied lines insurance policy, farm and ranch owners insurance
18 policy, or farm and ranch insurance policy must provide the
19 policyholder with written notice of any difference between each
20 form of the policy offered to the policyholder on renewal and the
21 form of the policy held immediately before renewal.

22 (b) A notice provided under this section must be written in
23 plain language.

24 (c) The commissioner may adopt rules as necessary to
25 implement this section. (V.T.I.C. Art. 5.45.)

26 Source Law

27 Art. 5.45. (a) An insurer, including a farm
28 mutual insurance company, county mutual insurance
29 company, Lloyd's plan, or reciprocal or interinsurance
30 exchange, that renews a policy of homeowners
31 insurance, fire and residential allied lines
32 insurance, farm and ranch owners insurance, or farm
33 and ranch insurance must provide the policy holder
34 with written notice of any difference in each form of
35 the policy offered to the policy holder on renewal and
36 the form of the policy held immediately before
37 renewal.

38 (b) A notice provided under this article must be
39 written in plain language.

40 (c) The commissioner may adopt rules as
41 necessary to implement this article.

42 CHAPTER 2003. PROCEDURES FOR EVALUATING FIRE LOSS RISK

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26 CHAPTER 2003. PROCEDURES FOR EVALUATING FIRE LOSS RISK

27 SUBCHAPTER A. EVALUATING FIRE LOSS RISK

28 Revised Law

29 Sec. 2003.001. FIRE LOSS INFORMATION. (a) The department
30 shall ascertain as soon as practicable the annual fire loss in this
31 state.

32 (b) The department shall, in a manner that will aid in
33 determining equitable insurance rates and methods to reduce annual
34 fire loss and insurance rates of this state or subdivisions of this

1 state:

2 (1) obtain, make, and maintain records regarding the
3 annual fire loss in this state; and

4 (2) collect data concerning the annual fire loss as
5 necessary to enable the department to classify:

6 (A) fire losses in this state;

7 (B) the causes of those fire losses;

8 (C) the amount of the premiums collected for fire
9 loss for each class of risk; and

10 (D) the amount paid for the fire losses.

11 (c) The commissioner may designate one or more advisory
12 organizations or other agencies to gather, audit, and compile the
13 fire loss experience of insurers. The insurers shall bear the costs
14 incurred under this subsection.

15 (d) To implement this section, the department may:

16 (1) employ clerical personnel, inspectors, experts,
17 and other assistants; and

18 (2) incur other necessary expenses. (V.T.I.C.
19 Art. 5.25, Sec. (a) (part).)

20 Source Law

21 Art. 5.25. (a) [The State Board of Insurance
22] Said Board shall have authority to employ
23 clerical help, inspectors, experts and other
24 assistants, and to incur such other expenses as may be
25 necessary in carrying out the provisions of this law.
26 Said Board shall ascertain as soon as practicable the
27 annual fire loss in this State; obtain, make and
28 maintain a record thereof and collect such data with
29 respect thereto as will enable said Board to classify
30 the fire losses of this State, the causes thereof, and
31 the amount of premiums collected therefor for each
32 class of risks and the amount paid thereon, in such
33 manner as will aid in determining equitable insurance
34 rates, methods of reducing such fire losses and
35 reducing the insurance rates of the State, or
36 subdivisions of the State. The Board may designate one
37 or more advisory organizations or other agencies to
38 gather, audit, and compile such experience of
39 insurers, and the cost thereof shall be borne by such
40 insurers.

41 Revisor's Note

42 Section (a), V.T.I.C. Article 5.25, refers to the
43 "State Board of Insurance." Chapter 685, Acts of the

1 73rd Legislature, Regular Session, 1993, abolished
2 that board and transferred its functions to the
3 commissioner of insurance and the Texas Department of
4 Insurance. Throughout this chapter, references to the
5 State Board of Insurance have been changed
6 appropriately.

7 Revised Law

8 Sec. 2003.002. FIRE SUPPRESSION RATINGS FOR BORDER
9 MUNICIPALITIES. In assigning or evaluating a fire suppression
10 rating for a municipality at or near the border between this state
11 and another state or the United Mexican States, the commissioner
12 shall consider the existence and capabilities of a fire department
13 or volunteer fire department that:

14 (1) serves an adjoining or nearby municipality in the
15 other state or the United Mexican States; and

16 (2) by agreement or by long-standing practice provides
17 fire suppression services to the municipality in this state.
18 (V.T.I.C. Art. 5.25-3 (part).)

19 Source Law

20 Art. 5.25-3. The commissioner, . . . in
21 assigning or evaluating a fire suppression rating for
22 a municipality at or near the border between this state
23 and another state or the United Mexican States, shall
24 take into account the existence and capabilities of a
25 fire department or volunteer fire department that
26 serves an adjoining or nearby municipality in the
27 other state or the United Mexican States and that by
28 agreement or by long-standing practice provides fire
29 suppression services to the Texas municipality.

30 Revised Law

31 Sec. 2003.003. CREDIT FOR REDUCING FIRE HAZARD. The
32 commissioner may give a locality, municipality, or other political
33 subdivision credit for:

34 (1) each fire hazard that the locality, municipality,
35 or other political subdivision reduces or removes;

36 (2) additional fire-fighting equipment, increased
37 police protection, or any other equipment or improvement that tends
38 to reduce the fire hazard of the locality, municipality, or other

1 political subdivision; and

2 (3) a good fire record made by the locality,
3 municipality, or other political subdivision. (V.T.I.C.
4 Art. 5.33, Sec. (a).)

5 Source Law

6 Art. 5.33. (a) The commissioner may give each
7 city, town, village, locality, or other political
8 subdivision credit for each and every hazard they may
9 reduce or entirely remove, and also for all added fire
10 fighting equipment, increased police protection, or
11 any other equipment or improvement that has a tendency
12 to reduce the fire hazard of any such city, town,
13 village, locality, or other political subdivision, and
14 also to give credit for a good fire record made by any
15 city, town, village, locality, or other political
16 subdivision.

17 Revisor's Note

18 (1) Section (a), V.T.I.C. Article 5.33, refers
19 to a "city, town, [or] village." The revised law
20 substitutes "municipality" for "city, town, [or]
21 village" because that is the term used in the Local
22 Government Code.

23 (2) Section (a), V.T.I.C. Article 5.33, states
24 that the commissioner of insurance may give credit for
25 a fire hazard that a locality, municipality, or other
26 political subdivision may "entirely remove." The
27 revised law omits the term "entirely" because to
28 "remove" something means to "entirely remove" it.

29 Revised Law

30 Sec. 2003.004. POLICYHOLDER CREDIT FOR REDUCING
31 HAZARD. (a) The commissioner may require an insurer to give
32 credit to a policyholder for a hazard that the policyholder reduces
33 or removes.

34 (b) For purposes of this section, the following actions
35 constitute a reduction in hazard by a policyholder:

36 (1) the installation of a new standard fire hydrant
37 approved by the department within the required distance of a risk,
38 as prescribed by the department; or

39 (2) the use of compressed air foam technology in

1 fire-fighting equipment.

2 (c) The insurer shall give credit in the proportion that the
3 hazard is reduced or removed and shall refund to the policyholder
4 the proportional part of the unearned premium charged for the
5 hazard that is reduced or removed. (V.T.I.C. Art. 5.33, Secs. (b),
6 (c), (d).)

7 Source Law

8 (b) The commissioner may also compel any company
9 to give any or all policy holders credit for any and
10 all hazards said policy holder or holders may reduce or
11 remove.

12 (c) For the purposes of this Article, the
13 installation of a new standard fire hydrant approved
14 by the department within the required distance of a
15 risk, as prescribed by the department, or the use of
16 compressed air foam technology in fire-fighting
17 equipment shall constitute a reduction in hazard by
18 the policy holder or holders.

19 (d) Said credit shall be in proportion to such
20 reduction or removal of such hazard and said company or
21 companies shall return to such policy holder or
22 holders such proportional part of the unearned premium
23 charged for such hazard that may be reduced or removed.

24 [Sections 2003.005-2003.050 reserved for expansion]

25 SUBCHAPTER B. MUNICIPAL FIRE LOSS LISTS

26 Revised Law

27 Sec. 2003.051. ANNUAL LIST OF INSURED FIRE LOSSES BY
28 MUNICIPALITY. (a) The department shall compile for each
29 municipality in this state a list for distribution to the
30 municipality of the insured fire and lightning losses that:

31 (1) exceed \$100; and

32 (2) are paid in the municipality for the preceding
33 statistical year under policy forms:

34 (A) adopted or approved by the commissioner and
35 authorized for use by Section 2301.052(b); or

36 (B) filed and in effect as provided by Section
37 2301.052(a).

38 (b) Each list must include:

39 (1) the name of each person recovering a loss under a
40 policy form described by Subsection (a);

41 (2) the address or location where the loss occurred;

1 and

2 (3) the amount paid by the insurer on the loss.

3 (c) The department shall develop each list from information
4 obtained from insurer reports of individual losses during the
5 statistical year. (V.T.I.C. Art. 5.25-2, Secs. 1, 2.)

6 Source Law

7 Art. 5.25-2

8 Sec. 1. In this article, "list" means the list
9 of fire and lightning losses in excess of \$100 paid
10 under policy forms adopted or approved by the
11 commissioner under Article 5.35 of this code or filed
12 and in effect as provided by Article 5.145 of this code
13 in a particular city or town prepared by the department
14 for distribution to the city or town.

15 Sec. 2. (a) The department shall compile for
16 each city or town in Texas a list of the insured fire
17 losses paid under policy forms adopted or approved by
18 the commissioner under Article 5.35 of this code or
19 filed and in effect as provided by Article 5.145 of
20 this code in that city or town for the preceding
21 statistical year.

22 (b) The list shall include:

23 (1) the names of persons recovering losses
24 under policy forms adopted or approved by the
25 commissioner under Article 5.35 of this code or filed
26 and in effect as provided by Article 5.145 of this
27 code;

28 (2) the addresses or locations where the
29 losses occurred; and

30 (3) the amount paid by the insurance
31 company on each loss.

32 (c) The department shall obtain the information
33 to make the lists from insurance company reports of
34 individual losses during the statistical year.

35 Revisor's Note

36 (1) Sections 1 and 2, V.T.I.C. Article 5.25-2,
37 refer to "policy forms adopted or approved by the
38 commissioner under Article 5.35 of this code or filed
39 and in effect as provided by Article 5.145 of this
40 code." Under V.T.I.C. Article 5.35, policy forms for
41 fire and allied lines insurance were adopted or
42 approved by the commissioner of insurance. The 78th
43 Legislature enacted Chapter 206, Acts of the 78th
44 Legislature, Regular Session, 2003, which became
45 effective June 11, 2003. Section 21.22 of that act
46 amended Article 5.35 to provide that policy forms for
47 residential property insurance, including fire and

1 allied lines insurance, are now regulated under
2 V.T.I.C. Article 5.13-2. However, under Section 2(b),
3 V.T.I.C. Article 5.145, enacted by Section 2.01 of
4 Chapter 206, an insurer may continue to use policy
5 forms previously promulgated, approved, or adopted
6 under Article 5.35. For clarity and to fully reflect
7 the changes made by Chapter 206, the revised law
8 substitutes "adopted or approved by the commissioner
9 and authorized for use by Section 2301.052(b)," the
10 revision of Section 2(b), V.T.I.C. Article 5.145, for
11 "policy forms adopted or approved by the commissioner
12 under Article 5.35 of this code."

13 (2) Section 1, V.T.I.C. Article 5.25-2, refers
14 to a "city or town." Throughout this subchapter, the
15 revised law substitutes "municipality" for "city or
16 town" because "municipality" is the term used in the
17 Local Government Code.

18 Revised Law

19 Sec. 2003.052. MUNICIPALITY'S REQUEST FOR LIST; RETURN
20 REPORT. (a) The department shall provide to a municipality a copy
21 of the list compiled under Section 2003.051 for the municipality on
22 the request of the municipality or the municipality's authorized
23 agent or fire marshal.

24 (b) Each municipality shall investigate the information
25 contained in the list to determine the losses actually occurring
26 within the limits of the municipality. The municipality shall
27 report to the department:

28 (1) a list of the losses that actually occurred within
29 the limits of the municipality;

30 (2) a list of the losses that did not occur within the
31 limits of the municipality; and

32 (3) other evidence essential to establishing the
33 losses occurring in the municipality. (V.T.I.C. Art. 5.25-2, Secs.
34 3, 4.)

1 Source Law

2 Sec. 3. Upon the request of any city or town, or
3 its duly authorized agent or fire marshall, the
4 department shall provide that city and town with a copy
5 of the list for its particular area.

6 Sec. 4. Each city or town shall investigate its
7 list to determine the losses actually occurring in its
8 limits and shall make a report to the department, which
9 report shall include:

10 (1) a list of the losses that actually
11 occurred in the limits of the city or town;

12 (2) a list of any losses not occurring in
13 the limits of the city or town; and

14 (3) other evidence essential to
15 establishing the losses in the city or town.

16 Revisor's Note

17 Section 3, V.T.I.C. Article 5.25-2, refers to a
18 request made by the "duly authorized agent or fire
19 marshall" of a municipality. The revised law omits
20 "duly" because the requirement that an agent be
21 authorized is sufficient to ensure that the agent has
22 proper authority to make the request.

23 Revised Law

24 Sec. 2003.053. LIST CORRECTIONS; USE. The department
25 shall:

26 (1) make changes that the department considers
27 appropriate to correct the list compiled under Section 2003.051 for
28 a municipality; and

29 (2) use the corrected list to determine the fire
30 record credit or debit for the municipality for the next year.

31 (V.T.I.C. Art. 5.25-2, Sec. 5.)

32 Source Law

33 Sec. 5. The department shall make such changes
34 or corrections as to it shall seem appropriate in order
35 to correct the list of insured fire and lightning
36 losses paid under policy forms adopted or approved by
37 the commissioner under Article 5.35 of this code or
38 filed and in effect as provided by Article 5.145 of
39 this code in a particular city or town and said list of
40 losses, as changed or corrected, shall be used to
41 determine the fire record credit or debit for each
42 particular city or town for the next year.

43 Revised Law

44 Sec. 2003.054. CHARGE FOR LIST AND FIRE RECORD SYSTEM. The
45 commissioner shall set and collect a charge for compiling and

1 providing a list under this subchapter and as the commissioner
2 considers appropriate for administering the fire record system.
3 (V.T.I.C. Art. 5.25-2, Sec. 6.)

4 Source Law

5 Sec. 6. The commissioner shall set and collect a
6 charge for compiling and providing a list of fire and
7 lightning losses paid under policy forms adopted or
8 approved by the commissioner under Article 5.35 of
9 this code or filed and in effect as provided by Article
10 5.145 of this code in a particular city or town and as
11 the commissioner shall deem appropriate to administer
12 the fire record system.

13 Revised Law

14 Sec. 2003.055. DEPARTMENT AUTHORITY TO REQUIRE PROVISION OF
15 FIRE LOSS INFORMATION. To accumulate statistical information for
16 the control and prevention of fires, the department may require
17 each municipality in this state and each insurer engaged in
18 business in this state to provide to the department a complete and
19 accurate report that lists all fire and lightning losses occurring
20 in this state that are reflected in the municipality's or insurer's
21 records. (V.T.I.C. Art. 5.25-2, Sec. 7.)

22 Source Law

23 Sec. 7. The department is authorized to require
24 each and every city or town in the State of Texas and
25 each and every insurance company or carrier of every
26 type and character whatsoever doing business in the
27 State of Texas to furnish to it a complete and accurate
28 list of all fire and lightning losses occurring within
29 the State of Texas and reflected in their records for
30 the purpose of accumulating statistical information
31 for the control and prevention of fires.

32 Revised Law

33 Sec. 2003.056. DISCRETIONARY PROVISION OF LIST. The
34 department is not required to provide a list compiled under this
35 subchapter if the fire record system is not in effect. (V.T.I.C.
36 Art. 5.25-2, Sec. 8.)

37 Source Law

38 Sec. 8. The department may, at its discretion,
39 furnish such list only during such time as the fire
40 record system remains in force and effect.

41 Revisor's Note

42 Section 8, V.T.I.C. Article 5.25-2, states that

1 the Texas Department of Insurance has discretion to
2 provide a list while the fire record system remains "in
3 force and effect." The revised law omits "force" from
4 the quoted language because "in force" is included in
5 the meaning of "in effect."

6 [Sections 2003.057-2003.100 reserved for expansion]

7 SUBCHAPTER C. VOLUNTARY INSPECTION PROGRAM

8 Revised Law

9 Sec. 2003.101. DEFINITIONS. In this subchapter:

10 (1) "Inspection" means a physical inspection of
11 property for which residential property insurance is sought.

12 (2) "Inspection certificate" means a certificate
13 issued under this subchapter by an inspector indicating that the
14 condition of property meets or exceeds minimum standards.

15 (3) "Inspector" means a person authorized by the
16 commissioner to perform inspections under this subchapter.

17 (4) "Minimum standards" means the standards adopted by
18 the commissioner by rule regarding the insurability of property
19 under this subchapter.

20 (5) "Residential property insurance" means insurance
21 against loss to real or tangible personal property at a fixed
22 location that is provided through a homeowners insurance policy, a
23 residential fire and allied lines insurance policy, or a farm and
24 ranch owners insurance policy. (V.T.I.C. Art. 5.33B, Sec. 2.)

25 Source Law

26 Sec. 2. In this article:

27 (a) "Residential property insurance"
28 means insurance against loss to real or tangible
29 personal property at a fixed location provided in a
30 homeowners policy, residential fire and allied lines
31 policy, or farm and ranch owners policy.

32 (b) "Inspection" means a physical
33 inspection of the property for which residential
34 property insurance is sought.

35 (c) "Inspection certificate" means a
36 certificate issued by an inspector pursuant to this
37 article indicating that the condition of the property
38 meets or exceeds minimum standards.

39 (d) "Minimum standards" are those
40 standards for property condition insurability under
41 this article as the commissioner shall determine by
42 rule.

1 (e) "Inspector" means a person authorized
2 by the commissioner to perform inspections under this
3 article.

4 Revised Law

5 Sec. 2003.102. RIGHT TO VOLUNTARY INSPECTION OF PROPERTY
6 CONDITION. A person with an insurable interest in real or tangible
7 personal property at a fixed location who desires to purchase
8 residential property insurance may obtain an independent
9 inspection of the condition of the property by an inspector
10 authorized to perform inspections under this subchapter. (V.T.I.C.
11 Art. 5.33B, Sec. 1.)

12 Source Law

13 Art. 5.33B

14 Sec. 1. Any person having an insurable interest
15 in real or tangible personal property at a fixed
16 location who desires to purchase residential property
17 insurance may procure an independent inspection of the
18 condition of the property by an inspector authorized
19 to perform inspections under this article of the
20 property proposed to be insured.

21 Revised Law

22 Sec. 2003.103. PLAN OF OPERATION. (a) The commissioner
23 shall adopt a plan of operation for the voluntary inspection
24 program.

25 (b) The plan of operation must include rules and standards
26 for the voluntary inspection program, including:

27 (1) the manner and scope of the inspections to be
28 performed;

29 (2) the contents of the written evaluation report;

30 (3) the form of the inspection certificate to be
31 issued;

32 (4) the term during which an inspection certificate is
33 valid;

34 (5) rules for the certification or licensing of
35 persons authorized to perform inspections under the program; and

36 (6) the fee that may be charged a person requesting an
37 inspection under the program. (V.T.I.C. Art. 5.33B, Sec. 3(a)
38 (part).)

Source Law

Sec. 3. (a) The commissioner shall adopt a plan of operation for the Voluntary Inspection Program. The plan of operation shall include rules and standards for the inspection program, including but not limited to the following:

(1) the manner and scope of the inspections to be performed;

(2) the contents of the written evaluation report;

(3) the form of the inspection certificate to be issued;

(4) the term during which an inspection certificate shall remain valid;

(5) rules for the certification and licensing of persons who are authorized to perform inspections under this program, . . . and

(6) the fee which may be charged to the person requesting the inspection.

Revisor's Note

Section 3(a), V.T.I.C. Article 5.33B, refers to rules and standards for the voluntary inspection program "including but not limited to" specified items. Throughout this subchapter, the revised law omits "but not limited to" and similar phrases because Section 311.005(13), Government Code (Code Construction Act), applicable to the revised law, and Section 312.011(19), Government Code, provide that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

Revised Law

Sec. 2003.104. ELIGIBLE INSPECTORS. Persons who may be certified or licensed to perform inspections under this subchapter include:

(1) a person licensed to perform real property inspections under Chapter 1102, Occupations Code; and

(2) a designated employee or agent of a county or municipality that chooses to establish a voluntary inspection program to inspect residential properties within the territorial limits of the county or municipality. (V.T.I.C. Art. 5.33B, Sec. 3(a) (part).)

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Sec. 3. (a) . . . [The plan of operation shall include] . . .

(5) [rules for the certification and licensing of persons who are authorized to perform inspections under this program,] which group shall include, but not be limited to:

(i) persons licensed to perform real property inspections under the Real Estate Licensing Act;

(ii) designated employees or agents of a county or municipality which elects to establish a voluntary inspection program to inspect properties for residential properties within the territorial limits of the county or municipality;

Section 3(a)(5), V.T.I.C. Article 5.33B, refers to persons licensed to perform inspections of real property under the "Real Estate Licensing Act," meaning Article 6573a, Vernon's Texas Civil Statutes. The relevant part of that act was codified in 2001 as Chapter 1102, Occupations Code, which took effect in 2003. For the convenience of the reader, the revised law substitutes a reference to Chapter 1102, Occupations Code.

Sec. 2003.105. PRESUMPTION OF INSURABILITY. (a) The existence of an inspection certificate issued under this subchapter creates a presumption that the condition of the property inspected is adequate for the issuance of residential property insurance.

(b) If an inspection certificate is used in whole or in part to determine insurability, an insurer may require as a condition of issuing a residential property insurance policy that the applicant for that insurance provide a written statement that there has not been a material or substantial change to the property condition since the date of the inspection certificate.

(c) An insurer who receives an inspection certificate may not use the condition of the property as grounds to refuse to issue or renew residential property insurance unless the insurer:

- (1) reinspects the property; and
- (2) specifies the areas of deficiency in the insurer's

declination letter. (V.T.I.C. Art. 5.33B, Sec. 4.)

Source Law

Sec. 4. (a) The existence of an inspection certificate issued under this article creates a presumption that the property condition is adequate for residential property insurance to be issued.

(b) As a condition of issuing a policy if an inspection certificate is used in whole or in part to determine insurability, an insurer may require a written statement by the applicant for residential property insurance stating that there have been no material or substantial changes to the property condition since the date of the inspection certificate.

(c) An insurer who receives an inspection certificate may not use property condition as grounds for refusing to issue or renew residential property insurance unless the insurer reinspects the property and specifies the areas of deficiency in its declination letter.

Revised Law

Sec. 2003.106. ENFORCEMENT. The commissioner by rule may provide for the use of any disciplinary procedure authorized by this code to:

(1) maintain the integrity of the voluntary inspection program; or

(2) ensure compliance with this subchapter. (V.T.I.C. Art. 5.33B, Sec. 5.)

Source Law

Sec. 5. The commissioner may by rule provide for the use of any of the disciplinary procedures authorized in this code to maintain the integrity of the program or ensure compliance with this article.

Revised Law

Sec. 2003.107. RULES. In addition to the plan of operation adopted under Section 2003.103, the commissioner may adopt rules that are appropriate to accomplish the purposes of this subchapter. (V.T.I.C. Art. 5.33B, Sec. 6.)

Source Law

Sec. 6. The commissioner is authorized to adopt rules in addition to the plan of operation that are appropriate to accomplish the purposes of this article.

Revisor's Note
(End of Subchapter)

Section 3(b), V.T.I.C. Article 5.33B, states that

the commissioner of insurance by rule may encourage the coordination of inspections under the article with inspections under V.T.I.C. Article 5.33A. The revised law omits this provision as impliedly repealed because Article 5.33A was repealed by Section 21.48, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003. The omitted law reads:

(b) The commissioner may adopt rules to encourage the coordination of inspections under this article with inspections performed under article 5.33A.

CHAPTER 2004. RESIDENTIAL PROPERTY INSURANCE IN UNDERSERVED AREAS

Sec. 2004.001. DEFINITION 972

Sec. 2004.002. DESIGNATION OF UNDERSERVED AREAS 972

Sec. 2004.003. AUTHORIZATION FOR ISSUANCE OF INSURANCE 973

Sec. 2004.004. EXCLUSION OF CERTAIN COVERAGE 974

Sec. 2004.005. AVAILABILITY OF COVERAGE 974

Sec. 2004.006. POLICY FORMS 975

Sec. 2004.007. INAPPLICABILITY OF CERTAIN LAWS TO
PREMIUMS 975

Sec. 2004.008. RATES 976

CHAPTER 2004. RESIDENTIAL PROPERTY INSURANCE IN UNDERSERVED AREAS

Revised Law

Sec. 2004.001. DEFINITION. In this chapter, "residential property insurance" means insurance against loss to real or tangible personal property at a fixed location that is provided through a homeowners insurance policy, residential fire and allied lines insurance policy, or farm and ranch owners insurance policy. (V.T.I.C. Art. 5.35-3, Sec. 1(a) (part).)

Source Law

(a) . . . For purposes of this article, residential property insurance means insurance coverage against loss to real or tangible personal property at a fixed location provided in a homeowners policy, residential fire and allied lines policy, or farm and ranch owners policy.

Revised Law

Sec. 2004.002. DESIGNATION OF UNDERSERVED AREAS. (a) The

1 commissioner by rule may designate an area as an underserved area
2 for residential property insurance.

3 (b) In determining which areas to designate as underserved,
4 the commissioner shall consider:

5 (1) whether residential property insurance is not
6 reasonably available to a substantial number of owners of insurable
7 property in the area; and

8 (2) any other relevant factor as determined by the
9 commissioner. (V.T.I.C. Art. 5.35-3, Sec. 1(a) (part).)

10 Source Law

11 Art. 5.35-3

12 Sec. 1. (a) By rule the commissioner may
13 determine and designate areas as underserved areas for
14 residential property insurance. In determining which
15 areas will be designated as underserved, the
16 commissioner shall consider whether residential
17 property insurance is not reasonably available to a
18 substantial number of owners of insurable property in
19 the underserved area and any other relevant factors as
20 determined by the commissioner. . . .

21 Revisor's Note

22 Section 1(a), V.T.I.C. Article 5.35-3,
23 authorizes the commissioner of insurance to "determine
24 and designate" underserved areas. The revised law
25 omits the reference to "determine" because, in
26 context, "determine" is included in the meaning of
27 "designate."

28 Revised Law

29 Sec. 2004.003. AUTHORIZATION FOR ISSUANCE OF
30 INSURANCE. An insurer authorized to write property or casualty
31 insurance in this state, including a Lloyd's plan and a reciprocal
32 or interinsurance exchange, that writes residential property
33 insurance in this state may write that insurance on forms adopted
34 under this chapter. (V.T.I.C. Art. 5.35-3, Sec. 2.)

35 Source Law

36 Sec. 2. All insurers authorized to write
37 property or casualty insurance in this state and
38 writing residential property insurance in this state,
39 including those insurers licensed under Chapters 18
40 and 19 of this code, are authorized to write insurance
41 on the forms adopted under this article.

1 Revisor's Note

2 Section 2, V.T.I.C. Article 5.35-3, refers to
3 "insurers licensed under Chapters 18 and 19 of this
4 code." Chapters 18 and 19 were codified in 2001 as
5 Chapters 941 and 942 of this code, respectively.
6 Chapters 941 and 942 provide for the authorization of
7 Lloyd's plans and reciprocal and interinsurance
8 exchanges to engage in business. For the convenience
9 of the reader, the revised law substitutes a reference
10 to those entities for the reference to Chapters 18 and
11 19.

12 Revised Law

13 Sec. 2004.004. EXCLUSION OF CERTAIN COVERAGE. Insurance
14 provided under this chapter may not include windstorm and hail
15 insurance coverage for a risk eligible for that coverage under
16 Chapter 2210. (V.T.I.C. Art. 5.35-3, Sec. 1(b).)

17 Source Law

18 (b) The property protection program for
19 underserved areas operated under this article may not
20 include windstorm and hail insurance coverage for a
21 risk eligible for that coverage under Article 21.49 of
22 this code.

23 Revisor's Note

24 Section 1(b), V.T.I.C. Article 5.35-3, refers to
25 the "property protection program for underserved areas
26 operated under this article." The revised law
27 substitutes a reference to "[i]nsurance provided under
28 this chapter" because Article 5.35-3 does not contain
29 any other reference to a "property protection program"
30 and the substituted phrase is consistent with the
31 terminology used in this chapter and in the law being
32 revised.

33 Revised Law

34 Sec. 2004.005. AVAILABILITY OF COVERAGE. In a designated
35 underserved area, each insurer described by Section 2004.003 shall
36 provide to the insurer's agents, and the agents shall offer to all

1 insureds, the full range of coverages prescribed under this chapter
2 subject to the insurer's applicable rates and underwriting
3 guidelines. (V.T.I.C. Art. 5.35-3, Sec. 5.)

4 Source Law

5 Sec. 5. In the designated underserved areas, all
6 insurers specified in Section 2 of this article shall
7 make available to their agents and all agents shall
8 offer all insureds the full range of coverages
9 promulgated under this article subject to the
10 applicable rates and underwriting guidelines of each
11 such insurer.

12 Revised Law

13 Sec. 2004.006. POLICY FORMS. (a) The commissioner shall
14 adopt policy forms for residential property insurance that are
15 specifically for use in designated underserved areas. The policy
16 forms must include a basic policy covering fire and allied lines
17 perils with endorsements providing additional coverage at the
18 insured's option.

19 (b) An insurer writing insurance in an underserved area may
20 use the policy forms adopted under this chapter. (V.T.I.C.
21 Art. 5.35-3, Sec. 3.)

22 Source Law

23 Sec. 3. The commissioner shall adopt policy forms
24 for residential property insurance specifically for
25 use in the designated underserved areas. The policy
26 forms adopted pursuant to this article shall include a
27 basic policy covering fire and allied lines perils
28 with endorsements providing additional coverages at
29 the option of the insured. The adopted policy forms
30 may be used by all insurers writing insurance in
31 underserved areas.

32 Revised Law

33 Sec. 2004.007. INAPPLICABILITY OF CERTAIN LAWS TO
34 PREMIUMS. The premium for an insurance policy written under this
35 chapter is not:

- 36 (1) subject to tax under Chapter 221; and
37 (2) considered net direct premiums under Section
38 2210.003(7). (V.T.I.C. Art. 5.35-3, Secs. 6, 7.)

39 Source Law

40 Sec. 6. The premium on all policies written
41 pursuant to this article will not be subject to tax
42 under Article 4.10 of this code.

Sec. 7. The premium on all policies written pursuant to this article will not be considered net direct premiums under the provisions of Section 3(g), Article 21.49, of this code.

Revised Law

Sec. 2004.008. RATES. Rates for coverage provided under this chapter are determined according to the provisions of this code applicable to the insurer providing the coverage. (V.T.I.C. Art. 5.35-3, Sec. 4.)

Source Law

Sec. 4. The rates for residential property insurance subject to this article shall be determined in accordance with the provisions of this code applicable to each insurer.

CHAPTER 2005. HOME WARRANTY AND HOME
PROTECTION INSURANCE

Sec. 2005.001.	DEFINITIONS	976
Sec. 2005.002.	AUTHORIZATION TO WRITE CERTAIN INSURANCE	977
Sec. 2005.003.	MANNER OF REGULATION	978
Sec. 2005.004.	LIMITS OF COVERAGE	978

CHAPTER 2005. HOME WARRANTY AND HOME
PROTECTION INSURANCE

Revised Law

Sec. 2005.001. DEFINITIONS. In this chapter:

(1) "Home protection insurance" means coverage insuring a purchaser of a home protection service or product against actual property loss.

(2) "Home protection service or product" means a service or product used for the protection of residential property, including a service or product provided by a person regulated under Chapter 1702, Occupations Code.

(3) "Home warranty insurance" means coverage:

(A) insuring performance by a builder of residential property of the builder's warranty obligations to a purchaser of the residential property; or

(B) insuring against named defects arising from

1 failure of the builder to construct residential property in
2 accordance with specified construction standards. (V.T.I.C. Art.
3 5.53-A, Sec. 2.)

4 Source Law

5 Sec. 2. In this article:

6 (1) "Home warranty insurance" means
7 coverage insuring:

8 (A) performance by builders of
9 residential property of their warranty obligations to
10 purchasers of such property; or

11 (B) against named defects arising
12 from failure of the builder to construct residential
13 property in accordance with specified construction
14 standards.

15 (2) "Home protection insurance" means
16 coverage insuring purchasers of home protection
17 services or products against actual property loss.

18 (3) "Home protection service or product"
19 means a service or product used for the protection of
20 residential property, including a service or product
21 provided by a person regulated under the Private
22 Investigators and Private Security Agencies Act
23 (Article 4413(29bb), Vernon's Texas Civil Statutes).

24 Revisor's Note

25 Section 2(3), V.T.I.C. Article 5.53-A, refers to
26 the Private Investigators and Private Security
27 Agencies Act (Article 4413(29bb), Vernon's Texas Civil
28 Statutes). That statute was codified in 1999 as
29 Chapter 1702, Occupations Code. The revised law is
30 drafted accordingly.

31 Revised Law

32 Sec. 2005.002. AUTHORIZATION TO WRITE CERTAIN INSURANCE.
33 An insurer authorized to engage in the business of fire insurance
34 and allied lines or inland marine insurance may write home warranty
35 insurance or home protection insurance in this state. (V.T.I.C.
36 Art. 5.53-A, Sec. 1(a).)

37 Source Law

38 Art. 5.53-A

39 Sec. 1. (a) Any company licensed to engage in
40 the business of fire insurance and its allied lines, or
41 inland marine insurance, or both, is authorized to
42 write home warranty insurance or home protection
43 insurance in this state.

44 Revisor's Note

45 Section 1(a), V.T.I.C. Article 5.53-A, refers to

an insurer "licensed" to engage in the business of fire insurance and allied lines or inland marine insurance. The revised law substitutes "authorized" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

Revised Law

Sec. 2005.003. MANNER OF REGULATION. Home warranty insurance or home protection insurance is not inland marine insurance, but is governed in the same manner and to the same extent as inland marine insurance. (V.T.I.C. Art. 5.53-A, Sec. 1(b).)

Source Law

(b) Insurance subject to this article is not inland marine insurance, but shall be governed in the same manner and to the same extent as inland marine insurance.

Revisor's Note

Section 1(b), V.T.I.C. Article 5.53-A, refers to "[i]nsurance subject to this article." For clarity, the revised law substitutes "[h]ome warranty insurance or home protection insurance" for the quoted language because those are the kinds of insurance subject to Article 5.53-A, revised as this chapter.

Revised Law

Sec. 2005.004. LIMITS OF COVERAGE. The amount of coverage under a home protection insurance policy may not exceed \$2,000 for any single occurrence. (V.T.I.C. Art. 5.53-A, Sec. 1(c).)

Source Law

(c) The amount of coverage under a policy of home protection insurance may not exceed \$2,000 for any single occurrence.

CHAPTER 2006. PREMIUM RATE DISCOUNTS

SUBCHAPTER A. OPTIONAL PREMIUM DISCOUNT FOR USE OF INSULATING CONCRETE FORM SYSTEM

Sec. 2006.001. DEFINITIONS 979

Sec. 2006.002. OPTIONAL PREMIUM DISCOUNT 980

1	Sec. 2006.003.	PROPERTY INSPECTION	980
2	Sec. 2006.004.	PREMIUM DISCOUNT; EXCEPTION	981
3	Sec. 2006.005.	RULES	981
4	[Sections 2006.006-2006.050 reserved for expansion]		
5	SUBCHAPTER B. OPTIONAL PREMIUM DISCOUNT FOR CERTAIN RESIDENTIAL		
6	PROPERTY INSURANCE POLICIES		
7	Sec. 2006.051.	DEFINITIONS	982
8	Sec. 2006.052.	OPTIONAL PREMIUM DISCOUNT	982
9	Sec. 2006.053.	APPROVAL OF ACTUARIALLY JUSTIFIED	
10		PREMIUM DISCOUNT	984
11	Sec. 2006.054.	LIMIT ON PREMIUM DISCOUNT	984
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CHAPTER 2006. PREMIUM RATE DISCOUNTS

SUBCHAPTER A. OPTIONAL PREMIUM DISCOUNT FOR USE OF INSULATING CONCRETE FORM SYSTEM

Revised Law

Sec. 2006.001. DEFINITIONS. In this subchapter:

(1) "Applicant" includes:

(A) an applicant for new insurance coverage; and

(B) a policyholder renewing insurance coverage.

(2) "Insulating concrete form system" means a building

construction system primarily used to frame exterior walls in which polystyrene foam forms are placed in the walls of a structure under construction and filled with concrete and steel reinforcing material to become a permanent part of the structure.

(3) "Insurer" means an insurer authorized to write property and casualty insurance in this state, including:

(A) a county mutual insurance company;

(B) a farm mutual insurance company;

(C) a Lloyd's plan; and

(D) a reciprocal or interinsurance exchange.

(V.T.I.C. Art. 5.33E, Sec. 1.)

Source Law

Art. 5.33E

1 Sec. 1. In this article:
2 (1) "Applicant for insurance coverage"
3 includes an applicant for new coverage and a
4 policyholder renewing coverage.
5 (2) "Insurer" means an insurer authorized
6 to write property and casualty insurance in this
7 state. The term includes:
8 (A) a county mutual insurance
9 company;
10 (B) a farm mutual insurance company;
11 (C) a Lloyd's plan; and
12 (D) a reciprocal or interinsurance
13 exchange.
14 (3) "Insulating concrete form system"
15 means a building construction system primarily used to
16 frame exterior walls in which polystyrene foam forms
17 are placed in walls of a structure under construction
18 and filled with concrete and steel reinforcing
19 material to become a permanent part of the structure.

20 Revised Law

21 Sec. 2006.002. OPTIONAL PREMIUM DISCOUNT. (a) In
22 accordance with the rules adopted by the commissioner under this
23 subchapter, an insurer may grant to an applicant a discount in the
24 applicant's homeowners insurance premiums for insured property on
25 receipt of written verification from the applicant that the
26 property was constructed with an insulating concrete form system.

27 (b) The commissioner by rule shall prescribe the
28 requirements for determining that a structure was constructed with
29 an insulating concrete form system.

30 (c) Verification under this section must comply with the
31 requirements prescribed by the commissioner. (V.T.I.C.
32 Art. 5.33E, Secs. 2, 3(a) (part).)

33 Source Law

34 Sec. 2. (a) On receipt of written verification
35 from an applicant for insurance coverage, an insurer
36 may grant a discount, in accordance with the rules
37 adopted by the commissioner under this article, in the
38 applicant's homeowners' insurance premiums for covered
39 property that is constructed using an insulating
40 concrete form system.

41 (b) Verification under this section must comply
42 with the requirements prescribed under Section 3 of
43 this article.

44 Sec. 3. (a) The commissioner:
45 (1) shall adopt rules that prescribe the
46 requirements for determining that a structure has been
47 built using an insulating concrete form system;
48 and

49 Revised Law

50 Sec. 2006.003. PROPERTY INSPECTION. (a) If determined

1 necessary by the commissioner, the rules adopted under this
2 subchapter may require an inspection of the property to be insured.

3 (b) The applicant shall pay the costs of a required
4 inspection. (V.T.I.C. Art. 5.33E, Sec. 3(b).)

5 Source Law

6 (b) If determined necessary by the
7 commissioner, the rules adopted under this section may
8 require an inspection of the property to be insured.
9 The applicant for insurance coverage shall pay the
10 costs of any inspection required under this
11 subsection.

12 Revised Law

13 Sec. 2006.004. PREMIUM DISCOUNT; EXCEPTION. (a) The
14 commissioner by rule shall establish the premium discount under
15 this subchapter based on sound actuarial principles.

16 (b) The commissioner may approve a premium discount greater
17 or less than the discount established by rule under Subsection (a)
18 if:

19 (1) the insurer files the proposed discount with the
20 department; and

21 (2) the commissioner determines that the proposed
22 discount is actuarially justified. (V.T.I.C. Art. 5.33E, Sec. 4.)

23 Source Law

24 Sec. 4. (a) The commissioner shall establish
25 by rule the amount of the premium discount applicable
26 under this article based on sound actuarial
27 principles.

28 (b) The commissioner may approve a discount
29 greater or less than the discount established under
30 Subsection (a) of this section if:

31 (1) the insurer files the proposed
32 discount with the department; and

33 (2) the commissioner determines that the
34 proposed discount is actuarially justified.

35 Revised Law

36 Sec. 2006.005. RULES. The commissioner may adopt rules as
37 necessary to implement this subchapter in addition to other rules
38 adopted under this subchapter. (V.T.I.C. Art. 5.33E, Sec.
39 3(a)(part).)

40 Source Law

41 Sec. 3. (a) [The commissioner:]

42 . . .

1 (2) may adopt other rules as necessary to
2 implement this article.

3 [Sections 2006.006-2006.050 reserved for expansion]

4 SUBCHAPTER B. OPTIONAL PREMIUM DISCOUNT FOR CERTAIN RESIDENTIAL
5 PROPERTY INSURANCE POLICIES

6 Revised Law

7 Sec. 2006.051. DEFINITIONS. In this subchapter:

8 (1) "Affiliate" means an entity classified as an
9 affiliate under Section 823.003.

10 (2) "Insurer" means an insurer authorized to write
11 residential property insurance, including:

12 (A) a county mutual insurance company;

13 (B) a farm mutual insurance company;

14 (C) a Lloyd's plan; and

15 (D) a reciprocal or interinsurance exchange.

16 (3) "Residential property insurance" means property
17 or property and casualty insurance covering a dwelling, including:

18 (A) homeowners insurance;

19 (B) residential fire and allied lines insurance;

20 (C) farm and ranch insurance; and

21 (D) farm and ranch owners insurance. (V.T.I.C.
22 Art. 5.43, Sec. (a).)

23 Source Law

24 Art. 5.43. (a) In this article:

25 (1) "Affiliate" means an entity classified
26 as an affiliate of an insurer under Section 823.003 of
27 this code.

28 (2) "Insurer" means an insurer authorized
29 to write residential property insurance, including a
30 county mutual insurance company, farm mutual insurance
31 company, Lloyd's plan, or reciprocal or interinsurance
32 exchange.

33 (3) "Residential property insurance"
34 means property or property and casualty insurance
35 covering a dwelling, including homeowners insurance,
36 residential fire and allied lines insurance, farm and
37 ranch insurance, or farm and ranch owners insurance.

38 Revised Law

39 Sec. 2006.052. OPTIONAL PREMIUM DISCOUNT. (a) Except as
40 provided by Section 2006.053, an insurer that issues a residential
41 property insurance policy may:

(1) discount the premiums that would otherwise be charged for the policy by not less than three percent if the policyholder:

(A) has continuously been a residential property insurance policyholder with the insurer or an affiliate of the insurer; and

(B) has not filed a residential property insurance claim during the three years before the effective date of the policy; and

(2) increase the amount of the discount by one percent for each subsequent year in which the policyholder:

(A) has been a residential property insurance policyholder with the insurer or an affiliate of the insurer; and

(B) has not filed a residential property insurance claim.

(b) This section applies regardless of whether any of the policies that continuously covered the policyholder was a different kind of residential property insurance policy from the policy eligible for the premium discount. (V.T.I.C. Art. 5.43, Secs. (b), (d).)

Source Law

(b) An insurer that issues a residential property insurance policy in this state may:

(1) provide a discount of not less than three percent in the premiums that would otherwise be charged for the policy if the policyholder has continuously been a residential property insurance policyholder with that insurer or an affiliate of that insurer but has not filed a residential property insurance claim during the three years before the effective date of the policy; and

(2) increase the amount of the discount by one percent for each subsequent year in which the policyholder has been a residential property insurance policyholder with that insurer or an affiliate of that insurer but has not filed a residential property insurance claim.

(d) This article applies without regard to whether any of the policies that continuously covered the policyholder, as described by Subsections (b)(1) and (2) of this article, was a different type of residential property insurance policy from the policy eligible for the discount.

1 Revised Law

2 Sec. 2006.053. APPROVAL OF ACTUARIALLY JUSTIFIED PREMIUM
3 DISCOUNT. The commissioner may approve a premium discount filed
4 with the department that is greater or less than the discount
5 specified by this subchapter if the commissioner determines the
6 discount is actuarially justified. (V.T.I.C. Art. 5.43, Sec. (e)
7 (part).)

8 Source Law

9 (e) . . . The commissioner may approve a
10 discount filed with the department that is greater or
11 less than the discount specified by this article if the
12 commissioner determines the discount is actuarially
13 justified.

14 Revised Law

15 Sec. 2006.054. LIMIT ON PREMIUM DISCOUNT. An insurer that
16 provides a premium discount under this subchapter is not required
17 to provide the discount in an amount that exceeds 10 percent of the
18 premiums that would otherwise be charged for the residential
19 property insurance policy. (V.T.I.C. Art. 5.43, Sec. (c).)

20 Source Law

21 (c) An insurer that provides a discount under
22 this article is not required to provide a discount
23 under this article that exceeds 10 percent of the
24 premiums that would otherwise be charged for the
25 residential property insurance policy.

26 Revised Law

27 Sec. 2006.055. RULES AND GUIDELINES. (a) The commissioner
28 shall adopt rules as necessary to implement this subchapter.

29 (b) The commissioner by rule shall establish guidelines
30 under which an insurer that provides a premium discount under this
31 subchapter shall determine the appropriate discount based on sound
32 actuarial principles. (V.T.I.C. Art. 5.43, Sec. (e) (part).)

33 Source Law

34 (e) The commissioner shall adopt rules as
35 necessary to implement this article and shall
36 establish by rule guidelines under which an insurer
37 that provides a discount under this article shall
38 determine the appropriate discount based on sound
39 actuarial principles. . . .

1	CHAPTER 2007. ASSESSMENT FOR RURAL FIRE PROTECTION	
2	Sec. 2007.001.	APPLICABILITY OF CHAPTER 985
3	Sec. 2007.002.	ASSESSMENT 986
4	Sec. 2007.003.	DETERMINATION OF ASSESSMENT 986
5	Sec. 2007.004.	DATES OF ASSESSMENT AND PAYMENT 987
6	Sec. 2007.005.	RECOVERY OF ASSESSMENT 987
7	Sec. 2007.006.	NOTICE TO POLICYHOLDERS 987
8	Sec. 2007.007.	VOLUNTEER FIRE DEPARTMENT ASSISTANCE
9		FUND 988
10	Sec. 2007.008.	RULES; COOPERATION 988
11	Sec. 2007.009.	EXPIRATION OF CHAPTER 989

12

CHAPTER 2007. ASSESSMENT FOR RURAL FIRE PROTECTION

13

Revised Law

14

Sec. 2007.001. APPLICABILITY OF CHAPTER. This chapter

15

applies only to an insurer that:

16

(1) is authorized to engage in business in this state,

17

including a stock company, mutual insurance company, farm mutual

18

insurance company, county mutual insurance company, Lloyd's plan,

19

and reciprocal or interinsurance exchange; and

20

(2) writes a policy of:

- 21
- (A) homeowners insurance;
- 22
- (B) fire insurance;
- 23
- (C) farm and ranch owners insurance;
- 24
- (D) private passenger automobile physical damage
- 25
- insurance;
- 26
- (E) commercial automobile physical damage
- 27
- insurance; or
- 28
- (F) commercial multiple peril insurance.

29

(V.T.I.C. Art. 5.102, Secs. 1(1), (2) (part), 2.)

30

Source Law

31

Art. 5.102

32

Sec. 1. In this article:

33

(1) "Insurer" means an insurer authorized

34

to engage in business in this state, including a stock

35

company, mutual, farm mutual, county mutual, Lloyd's

36

plan, or reciprocal or interinsurance exchange.

37

(2) ["Net direct premium" means the gross

1 direct premium written and reported by an insurer on
2 annual financial statements on:]

3 (A) policies of:

4 (i) homeowner's insurance;

5 (ii) fire insurance;

6 (iii) farm and ranch owner's
7 insurance;

8 (iv) private passenger
9 automobile physical damage insurance; and

10 (v) commercial automobile
11 physical damage insurance; and

12 (B) . . . a commercial multiple
13 peril policy.

14 Sec. 2. This article applies only to an insurer
15 that writes an insurance policy described by Section
16 1(2) of this article.

17 Revised Law

18 Sec. 2007.002. ASSESSMENT. The comptroller shall assess
19 against all insurers to which this chapter applies a combined total
20 of \$15 million for each 12-month period. (V.T.I.C. Art. 5.102,
21 Sec. 3(a) (part).)

22 Source Law

23 Sec. 3. (a) The comptroller shall assess all
24 insurers in an amount that totals \$15 million for each
25 12-month period. . . .

26 Revised Law

27 Sec. 2007.003. DETERMINATION OF ASSESSMENT. (a) In this
28 section, "net direct premium" means the gross direct premium
29 written and reported by an insurer on annual financial statements
30 on:

31 (1) an insurance policy described by Section
32 2007.001(2), other than a commercial multiple peril policy; and

33 (2) the nonliability portion of a commercial multiple
34 peril policy.

35 (b) Each insurer shall pay a portion of the assessment in
36 the proportion that the insurer's net direct premiums for the
37 period for which the assessment is made bear to the aggregate net
38 direct premiums written in this state by all insurers for that
39 period. (V.T.I.C. Art. 5.102, Secs. 1(2) (part), 3(a) (part).)

40 Source Law

41 [Sec. 1]

42 (2) "Net direct premium" means the gross
43 direct premium written and reported by an insurer on
44 annual financial statements on:

45 [(A) policies of:

(i) homeowner's insurance;
(ii) fire insurance;
(iii) farm and ranch owner's insurance;
(iv) private passenger automobile physical damage insurance; and
(v) commercial automobile physical damage insurance; and]
(B) the nonliability portion of a commercial multiple peril policy.

Sec. 3. (a) . . . Each insurer shall pay a portion of the assessment in the proportion that the insurer's net direct premiums for the period for which the assessment is made bear to the aggregate net direct premiums written in this state for that period.

Revised Law

Sec. 2007.004. DATES OF ASSESSMENT AND PAYMENT. (a) The comptroller shall assess insurers under this chapter on or before September 1 of each year.

(b) An insurer shall pay the amount of the insurer's assessment on or after the 60th day after the date the comptroller assesses the insurer. (V.T.I.C. Art. 5.102, Secs. 3(b), (c).)

Source Law

(b) The comptroller shall assess the insurers on or before September 1 of each year.
(c) An insurer shall pay the amount assessed under this section on or after the 60th day after the date the comptroller assesses the insurer.

Revised Law

Sec. 2007.005. RECOVERY OF ASSESSMENT. An insurer may recover an assessment under this chapter by:

(1) reflecting the assessment as an expense in a rate filing required under this code; or

(2) charging the insurer's policyholders. (V.T.I.C. Art. 5.102, Sec. 3(d).)

Source Law

(d) An insurer may recover an assessment under this section by:
(1) reflecting the assessment as an expense in a rate filing required under this code; or
(2) charging the insurer's policyholders.

Revised Law

Sec. 2007.006. NOTICE TO POLICYHOLDERS. (a) An insurer that recovers an assessment by charging the insurer's policyholders under Section 2007.005 shall provide notice to each policyholder

1 regarding the amount of the assessment being recovered.

2 (b) The notice may be included on:

3 (1) a declarations page;

4 (2) a renewal certificate; or

5 (3) a billing statement.

6 (c) The commissioner by rule may adopt a form for providing
7 the notice. (V.T.I.C. Art. 5.102, Sec. 3(e).)

8 Source Law

9 (e) An insurer that recovers an assessment under
10 this section from the insurer's policyholders shall
11 provide a notice to each policyholder of the amount of
12 the assessment being recovered. The notice required
13 by this subsection may be included on a declarations
14 page, renewal certificate, or billing statement. The
15 commissioner by rule may adopt a form for providing
16 notice under this subsection.

17 Revised Law

18 Sec. 2007.007. VOLUNTEER FIRE DEPARTMENT ASSISTANCE
19 FUND. The comptroller shall credit assessments collected under
20 this chapter to the volunteer fire department assistance fund
21 created under Section 614.104, Government Code. (V.T.I.C.
22 Art. 5.102, Sec. 3(f).)

23 Source Law

24 (f) The comptroller shall credit assessments
25 collected under this article to the volunteer fire
26 department assistance fund created under Section
27 614.104, Government Code.

28 Revised Law

29 Sec. 2007.008. RULES; COOPERATION. (a) The comptroller
30 and the commissioner shall adopt rules as necessary to implement
31 this chapter.

32 (b) The comptroller and the department shall cooperate as
33 necessary to implement this chapter. (V.T.I.C. Art. 5.102, Sec.
34 4.)

35 Source Law

36 Sec. 4. (a) The comptroller and the
37 commissioner shall adopt rules as necessary to
38 implement this article.

39 (b) The comptroller and the department shall
40 cooperate as necessary to implement this article.

1	<u>Revised Law</u>	
2	Sec. 2007.009. EXPIRATION OF CHAPTER. This chapter	
3	expires September 1, 2011. (V.T.I.C. Art. 5.102, Sec. 5.)	
4	<u>Source Law</u>	
5	Sec. 5. This article expires September 1, 2011.	
6	[Chapters 2008-2050 reserved for expansion]	
7	SUBTITLE E. WORKERS' COMPENSATION INSURANCE	
8	CHAPTER 2051. GENERAL PROVISIONS: WORKERS' COMPENSATION INSURANCE	
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18	[Sections 2051.102-2051.150 reserved for expansion]	
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24	ADMINISTRATIVE PENALTY	996
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28	ADMINISTRATIVE PENALTY	998
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31	AUTHORITY REQUIRED	999
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33	[Sections 2051.158-2051.200 reserved for expansion]	